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No. 2251

United States
Circuit Court of Appeals
For the Ninth Circuit.

Apostles

(In 7 Volumes.)

MATSON NAVIGATION COMPANY, a Corporation,
Appellant,

VS.

UNITED ENGINEERING WORKS, a Corporation,
Appellee,

VOLUME V.

(Pages 1505 to 1904, Inclusive.)

Upon Appeal from the United States District Court for the
Northern District of California, First Division

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(Testimony of Richard W. Curtis.)

Q. On to a form that he had? A. Yes.

Q. Was that satisfactory to you?

A. That was satisfactory to me, as it is the general method of keeping time. A timekeeper having a handbook, checking the cards up with that handbook, and then making a résumé of that time,—that is the general method.

Q. Well, it was satisfactory to you, any way?

A. It was satisfactory; yes.

Q. Whether it was general or special? A. Yes.

Q. And thereafter Mr. Putzar furnished you with the time-sheets that you have introduced in evidence?

A. They came out of that book, yes.

Q. That is the only recollection you have of going on the ship?

A. Well, I can't recollect how many times I was on that ship, you know it is two years ago. I have been on a great many ships since then.

Q. But you have this in your mind that you went there at the inception of the work and inquired how the time was to be kept? [1313—1225] A. Yes.

Q. And you have no other distinct recollection of any other visit to the ship except that one?

A. I had a visit to the ship a couple of days before she sailed on this side.

Q. On this side? A. Yes.

Q. Leave out this side. Over there did you have any other visit to the ship that you recollect?

A. I was on and off that ship numerous times. I couldn't just tell you just exactly what day or what time I was on that ship, I could not say that.

(Testimony of Richard W. Curtis.)

Q. I am confining my question to a recollection of a particular time.

A. No. I was on and off a great many times. That is as far as I can go with it, because I do not remember any other particular visit.

Q. And connect it up?

A. And connect it up in any particular day or week from any particular fact.

Q. Except this first occasion?

A. Just this occasion I know of.

Q. Did you and Mr. Putzar at that time arrange the method of handling the time-cards between you?

A. We arranged it in as much—we followed the same routine as any other timekeeper would follow.

Q. Now, please confine yourself specifically to what was done with Mr. Putzar. Have you any recollection of making any arrangement with Mr. Putzar at that time as to how you were to handle the time-cards?

A. The arrangement was a general method employed by timekeepers whereby they check up with their handbooks the time on any sheet that might be turned over; the time-cards were turned over to them for checking on their handbook.

Q. I ask you, now, if you made any specific reference to an arrangement by which the time-cards were to be handled.

A. We made the [1314—1226] arrangement that just as soon as we got in all cards and they were properly checked up by us, they would be turned over to him for checking.

(Testimony of Richard W. Curtis.)

Q. You made that arrangement at that time with Mr. Putzar? A. Yes.

Q. How had Mr. Putzar received the time-cards which he had in his possession at that time?

A. How had he received them?

Q. Yes.

A. He received them all together in one pile.

Q. From whom?

A. From either myself personally or after I was through, if Mr. Putzar had not called to the office I would go myself and get them.

Q. We are talking about the inception of the work, Mr. Curtis; this very day that the work was inaugurated you went over there to talk over the method of keeping time and you found him in possession of a lot of time-cards. A. Yes.

Q. How did he get them?

A. Well, Mr. Putzar, he got the time-cards after I had checked them up, and he got them just in a pile as they came.

Q. Where did he get them from?

A. He got them from me on the first day.

Q. Did you take them over to him on this occasion?

A. No; he was at the office demanding the time.

Q. Demanding the time-cards?

A. Demanding the time of the ship for checking.

Q. Did he make that demand of you?

A. I was in the office; he made the demand of the timekeeper.

Q. I was referring to you.

A. We were both standing there at the time.

(Testimony of Richard W. Curtis.)

Q. Why didn't you then talk with him over the method of keeping time. [1315—1227]

A. Well, as a general rule, I don't talk with the timekeeper over the method of keeping time until the job is probably got under way, and then I try and find out how he is keeping the time. I want to know in what method he is keeping a check on us.

Q. Had you met Mr. Putzar before this occasion?

A. I met Putzar probably about six or seven years before this occasion. Mr. Putzar did not know me at the time.

Q. Where did you meet him?

A. I had met him on the Oceanic dock one day.

Q. You knew he was a great friend of Mr. Gray?

A. I did not know at that time; I did not know the man personally; only I referred to him as Mr. Putzar, that is all.

Q. You know him now to be a great friend of Mr. Gray, do you?

A. I do not. I have not seen Mr. Putzar from the day he left the ship.

Q. Do you mean to say that you don't know of Mr. Putzar at all except in connection with this work on the "Hilonian"?

A. That is all, the only time I came in contact with Mr. Putzar was in regard to in connection with repairs was on the "Hilonian," that is all.

Q. I am speaking, now, of your knowledge derived through connection with the United Engineering Works officials? A. Yes.

Q. You don't know that they knew him—

(Testimony of Richard W. Curtis.)

A. I don't know. I don't know the extent of acquaintanceship, what they knew of the man or anything else.

Q. You never saw Mr. Putzar using this printed time-book?

A. Yes, I saw Mr. Putzar using this printed time-book.

Q. The book from which your exhibit 3 was extracted? A. Yes. [1316—1228]

Q. Where was he using it?

A. He was using aboard the ship.

Q. Well, now, we are coming to another occasion when you have a distinct recollection of being on board the ship.

A. I have a recollection of seeing him use the book and seeing him use it continually, but to say at what date or what hour, or what day I saw him, I could not tell you at the present time.

Q. Now, then, you have a distinct recollection of seeing him use the time-book aboard the ship?

A. Yes.

Q. Whereabouts?

A. I could not tell you whereabouts. I have no recollection of where he was at the time.

Q. Well, was it in a room?

A. I could not say as to that.

Q. Do you know where these cards were taken to on the ship? A. Not all the time; no.

Q. Do you know any time where they were taken to?

A. At one time I saw him in a room, the time that

(Testimony of Richard W. Curtis.)

I took the cards to him.

Q. He was in a room; did he have this time-book?

A. He had the book on his desk, yes.

Q. And you delivered the cards yourself to him on this occasion in this room? A. Yes.

Q. What room was that?

A. I could not tell you; I don't know.

Q. Don't know one room from another on a ship?

A. There is a good many rooms on a ship, and unless some incident might come up that you might look at the name of the room or something on that would recall it or impress it on your mind, you would not remember it.

Q. How did you happen to go to this room?

A. How did I happen to go to this room?

Q. Yes. A. I inquired where Mr. Putzar was.

Q. And they said what?

A. They told me maybe he was down [1317—1229] below and I know I chased around the ship, you know,—a man aboard ship, he is very likely to be anywhere on a ship, and I finally located him.

Q. Do you remember, Mr. Curtis, that you have testified that Mr. Putzar entered the time-cards into his time-book? A. Yes, this book here.

Q. Is that correct? A. This printed book.

Q. These time-cards having been checked by you and turned over to Putzar as correct were entered by Putzar in the printed time-book?

A. Yes, they were entered.

Q. After entering the time-cards in that time-book what was the object of Mr. Putzar checking over the

(Testimony of Richard W. Curtis.)

time-sheets with his handbook?

A. What was the object? Well, every man has his own method of checking; I did not inquire into his object. I suppose it was to find out whether he had transcribed them correctly or not. I did not ask the man the manner in which he intended to check it in detail, what his reasons were for checking it back on the sheets because I would take a check of the sheets myself with the time-cards.

Q. Did you ever hear him complain that the time-sheets which had been transcribed from the cards did not check up with his handbook?

A. No, sir, I did not.

Q. You never heard any complaint of a lack of harmony between the time-cards and his time-sheets?

A. Not the time-cards and the time-sheets, but the time-cards and his handbook.

Q. Did you ever hear of a lack of harmony there?

A. Well, in this way that he would come across a card that he did not think was right or his handbook did not correspond, and the timekeeper or myself, or whoever would be there would go with him to find that man. [1318—1230]

Q. Are you now generalizing or specializing?

A. I am specializing, I may state.

Q. What was the occasion on which this happened, where the handbook did not correspond with the time-sheets as transcribed from the cards?

A. There were several occasions that it didn't. But on a job like that where a timekeeper is right on the job and checks his man, why, the timekeeper and

(Testimony of Richard W. Curtis.)

ourselves reach a decision as to what should be the day's time.

Q. And in each case where there was a dispute the time-sheets as transcribed from the cards prevailed, did they not?

A. This was done before it was transcribed on the sheets.

Q. What was done before?

A. This checking up of the difference between the handbook and the cards.

Q. How do you know? A. Why do I know?

Q. Yes.

A. Because he would come to me with it.

Q. Come to you with that?

A. Well, he would say, here is a man had a card—here is a certain man, why possibly, you have got 7 hours down for him—

Q. On the time-card?

A. On the time-card. And I have only four or six or whatever it might be.

Q. How do you know that he had not already transcribed the time-card on to his sheets?

A. Because he did not turn the sheets over to me until after he had transcribed them and checked them up.

Q. I ask you how you know that. How do you know that he had not transcribed on to his sheets the cards before he had come to you with this complaint about his handbook not corresponding with the cards?

A. Well, in this manner, that I knew in this way

(Testimony of Richard W. Curtis.)

that after we had the discussions regarding—that is, at the time we had the discussions regarding the difference between the handbook [1319—1231] and the cards, why, I did not have the sheets turned over in my possession; after this discussion or these discussions, whenever they cropped up, were passed upon, sometime afterwards I got this sheet, possibly a couple of hours afterwards, which is the one I checked it up with and found that this card or that card was discarded, or whatever correction might have been on that card was eliminated from those sheets. In that way I knew he must have written these sheets out after he had checked his handbook and the cards.

Q. So Mr. Putzar, then, in these discussions as to the correctness of the time prevailed always?

A. Not always; no.

Q. Sometimes he prevailed and sometimes you prevailed.

A. Where I could show him I was right I prevailed; where I could not I did not.

Q. You ever saw him actually entering the cards on to the sheets? A. I did at one time; yes.

Q. Is that time impressed in your mind now—do you remember it distinctly?

A. I remember it distinctly, yes, in this way—in a general way I remember seeing him writing the cards on to the sheets but I could not say just at what time it was, you know, or what hour of the day.

Q. Or where it was?

A. Well, *it aboard* ship some place. I could not

(Testimony of Richard W. Curtis.)

tell you what room it was.

Q. Was it in a room?

A. I could not say that.

Q. Now, Mr. Curtis, you seem to know a good deal about this time-book of Mr. Putzar and the time-sheets and his method of keeping the time-book and handling the time-cards. Do you know when it was that Mr. Putzar tore out the duplicate sheet which has been [1320—1232] introduced in evidence as your exhibit 3 and gave it to you?

A. Mr. Putzar, as a general rule, tore them out every day. I could not say whether he missed a day or two, but I know, as a general rule, he tore them out every day, so far as I can remember.

Q. After having completed the entries in them?

A. Yes. If I did not get possession of the sheet I would ask Mr. Putzar whether the time that I gave him was correct at that time.

Q. So you are willing to testify, are you, that after Mr. Putzar had made the entries in the time-book the duplicate sheet was turned over to you, torn out and turned over to you?

A. The duplicate sheets were torn out and turned over to me.

Q. With reference to the time, after he had made the entries in the sheets, or rather after he had made the entries in the book.

A. After he had made the entries in the book he tore out the sheets, yes.

Q. So that the entries in the book on the original

(Testimony of Richard W. Curtis.)

sheet and the carbon duplicate copies must be the same.

A. I did not see the carbon copy of the sheet; that is the carbon copies or the sheets that remain in that book, that did not interest me at all. What interested me was my voucher for the time.

Q. Well, Mr. Curtis, don't you know that the sheets which you have introduced here in evidence are in part copies themselves?

Mr. FRANK.—In what way?

Mr. McCLANAHAN.—Q. Don't you know that?

A. Not that I know.

Q. Don't you know that all of the printed page, the writing on all the printed page, is a copy?

Mr. FRANK.—You mean the reverse side of the sheets.

Mr. McCLANAHAN.—That is the only printed page.

A. I don't know how that was done. [1321—1233]

Q. You know that is a copy, don't you?

A. Yes, that is done with a carbon.

Q. Mr. Putzar's signature on those sheets is a copy signature, is it not? A. Some of them are.

Mr. FRANK.—Q. That is they are copied with carbon? A. They are carbon copies.

Mr. FRANK.—Some of them are originals.

Mr. McCLANAHAN.—Q. Some of them are. Did you know that there were some original signatures and some carbon signatures?

A. I did not pay any particular attention to

(Testimony of Richard W. Curtis.)

whether it was written with carbon or whether it was written with indelible pencil or what; the only thing I noticed was the signature on there and that was all I was after. I knew that that sheet was right because it had his signature on it.

Q. I am not speaking generally of the time at which the sheets were turned over to you but I am speaking of the time subsequent to that. Prior to your introducing that exhibit in evidence, did you know that some of the signatures of Mr. Putzar were carbon copies and some were originals?

A. I did not pay any particular attention to them.

Q. You did not know it then?

A. No; only I knew that was his signature.

Q. Well, now, that is the important part of that sheet, isn't it, his vouching in writing for the correctness of the time?

Mr. FRANK.—Well, that is for us to determine, whether it is important.

Mr. McCLANAHAN.—I have a right to know what the witness thinks of the matter.

A. The important part of the sheet is the face of the sheet. [1322—1234]

Q. That would not be important if Mr. Putzar did not vouch for it?

A. Mr. Putzar vouched for it for the simple reason that he put his signature on the back, that the form is made out that way.

Q. What form is made out that way?

A. This form here says timekeeper.

Q. He put it there because it said that?

(Testimony of Richard W. Curtis.)

A. I suppose so. I don't know his object in doing so. I did not inquire as long as I had his signature to the sheet.

Q. Don't you consider that his signature to the sheet was what you wanted?

A. I consider that his signature to the sheet, and that after this was checked, his signing that was then an agreement between us as to his vouching for the time.

Mr. FRANK.—Q. By "this" you mean what?

A. This sheet, the face of this sheet.

Mr. McCLANAHAN.—Q. Now, Mr. Curtis, will you please exhibit your exhibit 3 there from the 17th to the 24th and tell me if not every signature on those respective sheets made by Mr. Putzar is not a signature which appears to be an original and not a carbon?

Mr. FRANK.—The 17th and 24th of what?

Mr. McCLANAHAN.—Q. September.

A. Yes, I believe they are written in indelible pencil.

Q. And you will also observe, will you not, that the figures on the sheets are carbon?

A. Yes, they are carbon there.

Q. The signature original and the figures carbon, can you explain that, Mr. Curtiss?

A. I don't know whether it was the manner in which the book was made up that required it to be carbon. I did not pay any particular attention to that.

Q. Have you any explanation of the fact that that

(Testimony of Richard W. Curtis.)

situation occurs only from the 17th to the 24th of September, inclusive? [1323—1235]

A. I notice it does.

Q. Have you any explanation to make?

A. Any explanation?

Q. Yes.

A. The only explanation I make of it is this, that—

Mr. FRANK.—Just call Putzar and let him explain it. It is his book.

Mr. McCLANAHAN.—Mr. Frank, please let the witness alone.

Mr. FRANK.—I have been allowing you to go on for a long time here on the theory that this was cross-examination, for the purpose of testing the witness' memory or something of that sort, but outside of that this examination is utterly incompetent, and it is improper. I have been indulging you a great deal in this matter. When you object to my making the suggestion, it is time for me to offer objection; these sheets are the sheets of your timekeeper, your sheets passed in to us.

Mr. McCLANAHAN.—Do not argue it.

Mr. FRANK.—I am going to do just as I think proper.

Mr. McCLANAHAN.—You are encumbering the record with your argument; it is unnecessary for you to make an argument now.

Mr. FRANK.—It would not be encumbering the record so much if you would not interrupt me. I say these sheets are the sheets of your timekeeper that are passed in to us as is determinative of the

(Testimony of Richard W. Curtis.)

time upon that ship, and it is immaterial to us whether he signs it in carbon or ink or indelible pencil or what; if it is a statement of the account between the parties and he has indicated it is correct, that is the end of the proposition.

Mr. McCLANAHAN.—I might answer your argument, but I prefer to do so before the Court.

Mr. FRANK.—Yes, I guess so.

Mr. McCLANAHAN.—Q. Mr. Curtis, you have no explanation to make of that? [1324—1236]

A. I did not pay any attention as to the manner in which he inscribed his signature.

Q. Will you please note that the sheets prior to September 17 on the printed face are all carbon copy signatures? A. I see they are in carbon.

Q. Will you please turn to the sheets of September 8; you will notice that the second and third sheets of that date have no signature of Mr. Putzar on them. Do you notice that on the printed side?

A. I notice that, yes.

Q. Was your statement on your direct examination an inadvertence that all these sheets were signed by Mr. Putzar?

A. No, not all of them were signed by Mr. Putzar.

Mr. FRANK.—Q. He asked you whether it was an inadvertence, your statement on your direct examination. A. What do you mean?

Mr. McCLANAHAN.—Q. Was it a mistake?

A. Yes, evidently it was a mistake.

Q. Turn to the sheets of September 10. I call your attention to the second sheet of September 10;

(Testimony of Richard W. Curtis.)

has that got Mr. Putzar's signature on it?

A. No, it has not.

Q. Was it an inadvertence that you said that all the sheets had the signature of Mr. Putzar on them?

A. Yes.

Q. As a matter of fact, Mr. Curtis, bearing in mind your testimony that those sheets after having been completely transcribed by Mr. Putzar were then torn out and handed to you—bearing that in mind, is it not a fact that Mr. Putzar signed the sheets from September 17th to the 24th of September after they had been passed into your office?

A. From September 17th?

Q. Yes.

A. The sheets that you mention, he did not turn them into my possession until he signed them. That is, he did not [1325—1237] turn them over to me. I did not have them, hold them in my hands, until after he had signed them.

Q. That is, they were not torn out of the book until after he had signed them?

A. Not until after he had signed them.

Q. I hand you the original time-book and ask you to examine the original pages of September 17th to 24th, and see if you find Mr. Putzar's signature on those sheets?

A. No, sir, his signature is not there.

Q. That is, you find that Mr. Putzar's signature is not on any of the sheets on the printed side or any of the original sheets from September 17th to September 24th. Now, I ask you if you find on those

(Testimony of Richard W. Curtis.)

sheets the figures on the printed page in original?

Mr. FRANK.—Let me suggest to you, Mr. McClanahan, that you in your examination I have noticed are making a mistake in calling the time-sheets in the book originals when they are carbon copies, and the time-slips introduced by us as duplicates only originals.

Mr. McCLANAHAN.—I do not agree with you.

Mr. FRANK.—All right; you can proceed in *any* *you* wish. I want to call your attention to it so that we will understand it.

Mr. McCLANAHAN.—I will make it perfectly clear before I get through.

A. This is what? How do you mean?

Q. The writing and figures other than the signature on those sheets from September 17 to September 24, inclusive, is original work, is it not, and not copy work?

A. It is in the original pencil. This is the manner in which the carbon was handled in the book.

Q. Now, in order to straighten out Mr. Frank's suggestion, I will ask you, is not the white sheet on its printed side in this time-book an original all through; that is, is not the writing on it [1326—1238] original all through, all through the book, on every sheet?

A. I presume it is. It depends on the way the man handled the carbon in the book.

Q. Original, is it not? A. I suppose so.

Q. And is not the writing on the back of the white sheet copy? A. On the back of the white sheet?

(Testimony of Richard W. Curtis.)

Q. Yes.

A. What do you consider the back? Which is the back and which the front?

Mr. FRANK.—Carbon copy, you mean.

Mr. McCLANAHAN.—Q. As I see it, the back is the reverse side from the print side; that is carbon work, is it not, in the back?

A. Yes, that is carbon work.

Q. Take your Curtis Exhibit 3; you will find that those sheets are original on the reverse side and carbon on the printed side, are they not? A. Yes.

Q. Mr. Putzar, I suppose, was working for the Matson Navigation Company at the time of doing this work?

Mr. FRANK.—You know who he was working for.

Mr. McCLANAHAN.—This is cross-examination. Make your objection.

Mr. FRANK.—Well, I object to that kind of examination. That is my objection.

Mr. McCLANAHAN.—On that ground, that I know.

Mr. FRANK.—Mr. McClanahan, do not fight it off every time.

Mr. McCLANAHAN.—I do not want the record encumbered with your argument.

Mr. FRANK.—You do not want the record encumbered with anything I say.

Mr. McCLANAHAN.—Now, make your objection.

Mr. FRANK.—I have made it. [1327—1239]

(Testimony of Richard W. Curtis.)

Mr. McCLANAHAN.—Q. Now, answer the question.

A. Well, Mr. Putzar was the man that was keeping time on the steamer “Hilonian,” working for the Matson Navigation Company at that time.

Q. Now, with that in mind, have you any reason to offer why he did not sign the original sheets in the time-book from the 17th of September to the 24th of September?

A. I did not inquire into his reason. I got my original—I got my sheets or my record that he handed over to me signed, and I did not inquire into the manner that he kept these duplicates. I never saw this form of book. I did not inquire into it; that is his business.

Q. Bearing in mind that when you said duplicate you are referring to the reverse side, I am referring to the original or printed side where his signature appears.

A. I did not pay any particular attention to the reverse side on the sheet. What I did want and what I did check and what I received his signature for is for the list of the men and the hours worked on the face of that sheet.

Q. Now, Mr. Curtis, we will call your attention to the sheets of September 17th to 24th, appearing in your writing; will you please make again your explanation of why that happened?

A. Mr. Putzar had gotten behind in his timekeeping, that is in so far as transcribing, writing up the different sheets is concerned, transcribing the cards

(Testimony of Richard W. Curtis.)

on to these sheets. The cards were delivered to him every day; we called upon him every day in regard to the time and he said it was correct, that he had checked up his own time but that he had not time to transcribe it on to the sheets. I visited him several times and asked him for them as we needed the cards for our payroll. [1328—1240]

Q. Was this at the end of the work?

A. This was, well, at a time prior to the end of the work. Off and on I visited him several times; as I stated I could not tell you the exact date I visited him.

Q. Several times after the 17th of September?

A. Yes. I believe the last time that I visited him he said, "Well, I will get these days' time in, check it up and then I will transcribe it on to the sheets; the time is correct."

Q. What day was that?

A. I could not tell you the exact date.

Q. It must have been at the end of the work?

A. It was at the end of the work.

Q. It must have been at the end of the work?

A. Yes.

Q. All right; go on.

A. And so I told him that would be satisfactory, but I must have the cards or there would be no pay-day. So the following day, or later that afternoon, I cannot recall the exact hour or day,—it is two years hence,—he brought the cards up to me; and I was in the San Francisco office at that time—he brought the cards up to me and he had these cards segregated

(Testimony of Richard W. Curtis.)

in classifications; that is, he had one reverse to the other; and he brought his book to me and he asked me to take the cards as they were and not to disturb them, as he had checked them up with his handbook, and he wanted me to act as the clerk to transcribe those on to the sheets. Well, after I had transcribed them, it might have been later on in the day that I finished or the next morning, he called again at the office; he demanded the time-cards and this book and took it away with him; probably the next morning or the next afternoon, I could not say the specific hour or day he returned the cards as they originally were in the classification [1329—1241] in the book. I checked it up with my sheets. Then he called and got this book and signed it up.

Q. He called and got the book and signed up the backs of the sheets?

A. He signed these sheets; yes.

Q. In your presence?

A. He signed them in my presence, yes.

Q. How did you account for the fact that he executed this number on the original printed side?

A. He took them to a separate office and sat down and signed it. He said, "I will sign those sheets for you now," and I don't know what he did with the sheets or how he signed the sheets or what he did with the sheets in this bound book here.

Q. I thought you said that he signed the sheets in the bound book.

A. I know. But I say I do not know in what manner he signed them, that is the actual performance

(Testimony of Richard W. Curtis.)

of the thing. I know he was signing the sheets as he told me he would sign the sheets for me, but I did not look into this book after he turned these sheets over to me.

Q. You also said he signed it in your presence.

A. What I mean in my presence is it was within a distance of three or four feet from me.

Q. So that Mr. Putzar from the 17th of September to the 24th of September had failed to enter up the time in his time-book?

Mr. FRANK.—Make a distinction between the time-book and his time-book, so that we do not get them mixed.

Mr. McCLANAHAN.—I am talking about the time-book.

Mr. FRANK.—You mean his own private time-book.

Mr. McCLANAHAN.—Mr. Frank, you can clear that up on redirect examination; if the witness is not clear on what I mean I will certainly make the question clear to him. [1330—1242]

Mr. FRANK.—There is no necessity of my clearing it up on redirect examination. The witness is entitled to know and I am entitled to understand what you mean when you ask a question at the time it is asked.

Mr. McCLANAHAN.—Let the Reporter read the question and see if it is not perfectly intelligible.

Mr. FRANK.—We are wasting a great deal of time and you are insisting upon having your own way. What I want to know is, when you use that

(Testimony of Richard W. Curtis.)

word, do you mean this book here that you have before you, or do you mean Mr. Putzar's private book?

Mr. McCLANAHAN.—Mr. Frank, the record shows a clear distinction between the two. One is referred to as his handbook; the other is referred to as the time-book; and there is no possibility of mistake.

Mr. FRANK.—Very well. You mean not his private book but you mean this book; that is what I want to get at.

Mr. McCLANAHAN.—I mean what you have said. Read the question. You will find that is just what I said.

(The last question repeated by the Reporter.)

A. Yes, he has failed to do so, if you call this the time-book, if you have given it that distinctive name; but he had a handbook.

Mr. FRANK.—What is the use of going into that?

Mr. McCLANAHAN.—I object to the witness taking your cue.

Mr. FRANK.—The witness has a perfect right to make himself definite, as you are bound to make yourself definite in your questions. I don't want to get any matter into this record that I will have to fight with you about after the witness is gone.
[1331—1243]

A. The timekeeper would, as a general rule, and what in my practice and experience has been his handbook is his time-book, and the sheets that they make out is a resume of the time after it is checked over.

(Testimony of Richard W. Curtis.)

Mr. McCLANAHAN.—Q. I see. Well, now, all through this examination of Mr. Curtis, I want to make the distinction between the time-book and the handbook as I have done heretofore. You will understand that, will you?

A. Well, his handbook is the book he kept the time in every day, and this is the resume of the time.

Q. We will call that his handbook, as we have in the past, and we will call this his time-book, as we have in the past, so we will make no mistake or have no misunderstanding. Mr. Putzar having neglected to enter the time in his time-book, he requested you to do it for him? A. Yes, sir.

Q. And you did it for him?

A. Yes, I wrote out those sheets.

Q. And that was done after the work on the "Hilsonian" was finished? A. Yes.

Q. Now, Mr. Curtis, are you prepared to vouch for the correctness of the time-book sheets that have been introduced here as Exhibit 3?

Mr. FRANK.—He has already told you that he has checked them up and that he accepted them from your man as a correct statement of the time; he is not called upon to vouch for them, Mr. Putzar vouched for them.

Mr. McCLANAHAN.—Q. What have you got to say about that, Mr. Curtis?

A. This is a final settlement between the time-keeper on the ship and myself as to the time used aboard the ship. [1332—1244]

Q. And of course it is correct or you would not

(Testimony of Richard W. Curtis.)

have charged it?

A. It is correct, to the best of my knowledge, to the best of my ability.

Q. Mr. Curtis, did you from those time-book sheets make out the bill in this case?

A. Yes, sir, I did.

(A recess was taken until 2 P. M.) [1333—1245]

AFTERNOON SESSION.

Mr. McCLANAHAN.—Read the last question, Mr. Reporter.

(The last question and answer repeated by the Reporter.)

Q. That is from the sheets turned over to you by Mr. Putzar? A. Yes, sir.

Q. Now, Mr. Curtis, will you please tell me exactly how you did that,—you got the sheets before you and you were making out the bill; how did you do it?

A. I drew up on a piece of paper the different classifications of labor.

Q. As shown by the sheets?

A. As shown by the sheets. And then I took and called it off on to this sheet, you see.

Q. That is, you took the time-sheet and checked into the classification the number of hours shown?

A. Yes, that is, called it off on to the sheet.

Q. By calling off you mean checking into?

A. Checking into; yes.

Q. And then you totalled up the hours?

A. Yes, sir.

Q. And that total went into the bill?

(Testimony of Richard W. Curtis.)

A. Yes, sir.

Q. For instance, on the sheet which you drew off for the purpose of classification, you had machinists, machinists' helpers, and so on, at the top?

A. Yes, sir.

Q. And then when you ran across the work shown on the time-book sheet of machinists you would put down that work in that column, the hours?

A. I would put down the number of hours.

Q. Would you put down the dates on which those hours occurred? A. Oh, no.

Q. You simply put down the hours?

A. Just the concrete, the lump sum of segregations of those, that is all.

Q. Well, by a lump sum segregation you mean you took and put down the number of hours worked by each mechanic shown on each sheet?

A. No, no. I would not do it that way; I would take the sheet and, for instance, you had— [1334—1246]

Q. (Intg.) Take the sheet of the 23d of August, for instance. Let us see how you did it.

A. I would just take and I would check down the number of hours, say supposing we are taking it for machinists, as the first classification, I would take and check down—we had a certain number of machinists—and then I would put my rule there and I would add that up and I would call that off on the sheet.

Q. And so with the iron workers and helpers, etc.?

A. Yes, sir.

(Testimony of Richard W. Curtis.)

Q. And the sum total of the hours under that classification was put into the bill? A. Yes, sir.

Q. Where did you get the classification from, from the sheets? A. From the sheets, yes.

Q. Now, are you sure of that, Mr. Curtis?

A. Yes.

Q. You are sure of that, are you? A. Yes.

Q. Did you have nothing else to assist you in drawing the bill except these time-sheets?

A. That is all.

Q. And the bill was intended to be an exact resume, as we may call it, of the sheets themselves?

A. Yes, intended to be. Of course, you know it was never checked, although we offered to check it with the Matson Navigation Company for any clerical errors, but that was never done.

Q. That is, the sheets have never been checked with the bills since the bill was made out?

A. No, not with the Matson Navigation Company.

Q. Have you checked it at all?

A. I have partially checked it, yes.

Q. When? A. Here, a couple of days ago.

Q. Had you done it before that?

A. I had done it to make up the bill, yes.

Q. I mean after making the bill up had you checked the bill [1335—1247] up with the sheets prior to two or three days ago?

A. No, I had not.

Q. So since making up the bill you have checked the sheets and the bill but once? A. Yes.

Q. That is, two or three days ago? A. Yes.

(Testimony of Richard W. Curtis.)

Q. Did they check up two or three days ago?

A. No, there is a slight difference in the sheets.

Q. What is the difference that you found?

A. Well, I don't remember the exact total of the difference; I did not finish completely the checking up, I just went over it once, and I have not made a complete checking of it yet.

Q. Did you do this checking up two or three days ago for Mr. Frank?

A. I started to check it up to make a resume of it, yes.

Q. For him? A. Yes.

Q. And you have not finished that work?

A. I have not; no.

Q. How far did you get with it?

A. Well, I just went over it once, I had not checked it completely, I have not gone into it in detail.

Q. And you have not now in mind any errors that you found?

A. Oh, there is a difference, yes—there is a difference, I believe, between the machinists and the helpers.

Q. Which is correct, the sheets or the bill?

A. The sheets are correct.

Mr. FRANK.—You can check them up yourself, Mr. McClanahan, just as easy as we can—no doubt you have done it.

Mr. McCLANAHAN.—What has that got to do with this cross-examination?

A. You are liable to make errors, calling it off,

(Testimony of Richard W. Curtis.)

checking from one sheet to another, there is so many classifications. [1336—1248]

Q. Look at the sheet of August 23d. A. Yes.

Q. That sheet was incorporated into your bill rendered in this case? A. Not all of it.

Q. What was it of that sheet that was not?

A. The time from 107 to 185—that is, the workmen's number.

Q. Number 107. You mean 101, don't you from Hurley, the foreman? A. From 101 to 185.

Q. Why was that? You say that was not included in the original bill? A. No, sir.

Q. Why not?

A. Because it does not pertain to the list time and the material work on "Hilonian."

Q. You say that the time shown on that sheet of August 23d, from 101 to 185, that is for the first six men is not "Hilonian" work?

A. It is "Hilonian" work on the donkey boiler.

Q. Well, why didn't you charge us for that?

A. That was on an agreed price; we had a contract to do a certain amount of work on that donkey boiler.

Q. That was a contract, was it? A. Yes, sir.

Q. Please produce the contract. Have you it?

A. I have not.

Q. How much was it for?

A. I could not tell you offhanded. I don't remember.

Q. Mr. Putzar evidently did not know of that contract?

(Testimony of Richard W. Curtis.)

A. Mr. Putzar knew all the contracts on the job.

Q. Well, was he keeping time on the contract jobs as well as on the— A. (Intg.) No, he was not.

Q. Well, then, why did he keep the time on that— do you know?

A. I don't remember. I don't recall those circumstances very well, but I recall this, that he would not allow that time.

Q. He would not allow that time?

A. He marked it off on his [1337—1249] sheets, yes.

Q. On what sheet did he mark it off?

A. On this sheet.

Q. I show you the sheet of August 23d, found in the time-book of the Matson Navigation Company and ask you if the donkey boiler work is marked off on that sheet.

Mr. FRANK.—We object to that as incompetent and immaterial. We have got nothing to do with your own timekeeper, or with your own time-book. All we are interested in is what he passes in and allows, and what we put in our bill; and it shows on the face of it that he has crossed it out and not allowed it on our sheets. If he forgot or failed or neglected to cross it out on this, it cuts no figure in this case whatsoever, it is immaterial and I object to it.

Mr. McCLANAHAN.—Answer the question.

A. What is the question?

(The last question repeated by the Reporter.)

Mr. FRANK.—And the further objection, that the

(Testimony of Richard W. Curtis.)

sheet speaks for itself. If you want to introduce it in evidence, you can.

A. No, it is not marked off on that sheet.

Mr. McCLANAHAN.—Q. Do you know why it was not? A. No, sir.

Q. Are you clear in your mind now that Mr. Putzar marked it off on your sheet? A. Yes, sir.

Q. When did he do it?

A. At the end of the following day.

Q. That would be the 24th of August?

A. The 24th of August.

Q. Are you sure of that?

A. I am sure of that; yes.

Q. As a matter of fact, Mr. Curtis, don't you know that Mr. Putzar did not go on that job until the 25th or 26th of August?

A. I don't remember whether the 24th or 25th or 26th of August. I do remember that Mr. Putzar was there the first day the boat went over.

Q. You are sure of that, are you? A. Yes.
[1338—1250]

Q. You think he was there when the work shown on that sheet of August 23d was performed?

A. To the best of my knowledge, yes.

Q. What does your knowledge consist of?

A. You are asking me to remember a whole lot of details about two years back, and I have handled a great many of these sheets in the same manner since then.

Q. Well, now, you don't have to tax your memory for two years on this proposition, do you?

(Testimony of Richard W. Curtis.)

A. No. When you bring up a little detail as to the method, the manner in which these disputes arose, why, I can't give you the exact detail; they come up at the time and I pass them off my mind; I do not carry them around with me.

Q. Do you think the fact as to whether Mr. Putzar was there on the first or second day that work was done on the "Hilonian" is a matter of detail?

Mr. FRANK.—I object to that. I will have to instruct the witness not to answer all of this class of questions.

Mr. McCLANAHAN.—Do you instruct the witness not to answer that question, Mr. Frank?

Mr. FRANK.—Yes.

Mr. McCLANAHAN.—Q. Mr. Curtis, will you answer the question? I am trying to get at your idea of what you mean by detail.

A. Of what?

Q. Of what you mean by detail.

A. By detail—well, I do know that he crossed these off, this time off. Now, I do not know at what time he did it or at what particular moment, I can't remember.

Q. When did you learn of this donkey boiler contract—did you see the contract?

A. I had a list of what was agreed to be done under set figures of the work.

Q. What was the number of the donkey boiler contract? [1339—1251]

A. I could not recall it offhanded.

Q. Please furnish me with that number, will you,

(Testimony of Richard W. Curtis.)

at a later time. I have asked you for certain time cards, too; do not forget those. You gave that donkey boiler contract a number, did you?

Mr. FRANK.—One moment. I would like to know the purpose of the inquiry into the donkey boiler contract. It is not in the bill. It is not charged up against you, and it is utterly immaterial, and until I can ascertain the purpose of it I decline to go into it any further.

Mr. McCLANAHAN.—You decline to allow me to go any further?

Mr. FRANK.—I want to know what the purpose of it is, so I can determine its materiality; as it stands, it is immaterial.

Mr. McCLANAHAN.—The only answer I can give, or will give, to that, Mr. Frank, is that it is proper cross-examination. This Curtis Exhibit No. 1 contains the donkey boiler work. It contains a number appearing on the time-book, under the donkey boiler, 5297. Now, I have a perfect right to follow that up and find out all the details, how it happened that it had No. 5297 or whether that was the correct number.

Mr. FRANK.—As long as it is not charged up against you and not in this business at all, I can't see the materiality of it.

Mr. McCLANAHAN.—I will make you see it.

Q. You gave the donkey boiler a contract number, a job number?

A. I gave all the contracts a job number.

Q. What other contracts were there at this time

(Testimony of Richard W. Curtis.)

entered into between the Matson Navigation Company and the United Engineering Works?

A. I can't recall them all at the present time; I don't remember them.

Q. There were a number of them, were there?

A. There were [1340—1252] several of them, as I understand.

Q. Carried on contemporaneously with this work for which there was no contract? A. Yes, sir.

Q. Let me refresh your memory. Was there a circulating pump contract?

A. There was a circulating pump contract, yes.

Q. Carried on at the time this work was carried on?

A. No; the circulating pump contract, I believe, to the best of my knowledge, was completed prior to the time this work was done.

Q. Would you want to swear to it?

A. No, because I don't remember.

Q. Was there a Howden force draft contract?

A. I believe there was.

Q. Was that being carried on at this time?

A. Yes, I believe it was.

Q. What was the number of the circulating pump contract? A. I don't remember.

Q. Please furnish that. What was the number of the Howden force draft contract?

A. I don't remember.

Q. Please furnish that. Mr. Curtis, in checking over the time-books sheets which have been marked your Exhibit No. 3 with the bill which is numbered

(Testimony of Richard W. Curtis.)

Schedule 1 in this case, with reference to the classification, did you find any material difference?

A. There is a difference in the hours.

Q. I am not referring to the hours.

A. In the classification?

Q. Yes, the kind of labor. A. No, sir.

Q. No difference. You are sure of that?

A. Yes.

Q. Mr. Curtis, the time-book sheets, which is your Exhibit No. 3, contain charges made on every day except three for the work of electricians and your bill, Schedule 1, makes no charge [1341—1253] for electricians. Can you explain that?

A. An explanation to that is that we always charge electricians under the head of machinists.

Q. Machinists? A. Yes.

Q. So in this case the electricians were all charged under the head of machinists?

A. Yes, it has always been the custom.

Q. Irrespective of the custom, it is done in this case? A. Yes, it was done in this case.

Mr. FRANK.—Not irrespective of the custom but just because it is the custom.

Mr. McCLANAHAN.—Q. Mr. Curtis, there appears in the time-books for every day but three the work done by riggers, and I find no such classification on your bill. Can you explain that?

A. Well, it is under the head of helpers.

Q. Riggers comes under the head of helpers?

A. Yes.

Q. What kind of helpers?

(Testimony of Richard W. Curtis.)

A. Well, we class all our helpers together under one heading, just helpers.

Q. You did not in this bill. You have in the bill machinists' helpers and you have steam and pipe fitters' helpers.

A. Well, I mean the ordinary helper.

Q. Now, in this particular case, under what classification did you lump the riggers in making out the bill?

A. I lumped the riggers under the heading of helpers. Those helpers are also machinists' helpers and whatever they may be required to do all over that ship; they are called upon to do various things and they go under the head of helpers.

Q. But your bill segregates them?

A. Well, they are not working with one particular mechanic continually; you know what I mean is a steam-fitters' helper is segregated from an ordinary helper that would be called upon to do various things all over [1342—1254] the ship. A steam-fitter's helper will only help a steam-fitter, as a general rule.

Q. Those riggers, then, were classified by you under machinists' helpers?

A. Under the word "helpers."

Q. Helpers?

A. Well, they helped the machinists and they helped the iron workers, too; they work all over the ship, wherever required.

Mr. FRANK.—They are not marked there machinists' helpers at all.

Mr. McCLANAHAN.—Not marked so in the bill?

(Testimony of Richard W. Curtis.)

Mr. FRANK.—No.

Mr. McCLANAHAN.—Turn to Schedule 1, Mr. Curtis. Now, looking at that bill, under the ship's time, did you not intend to charge the Matson Navigation Company with 10,027 hours for helpers and refer to them as machinists' helpers? A. No.

Q. Why did you make a distinction then between those helpers and steam-fitters' helpers?

A. The reason is that, that those helpers are required to do all classes of work.

Q. What helpers are you referring to now?

A. Those charged under the word "helpers" here, 10,027 hours.

Q. That class of helpers?

A. That is what I am referring to.

Q. What about the other?

A. The steam-fitters' helpers I am referring to are helpers that help the steam-fitters.

Q. And are a distinct class in themselves?

A. Are a distinct class of helpers; that is, they belong to that trade.

Q. Now, did you charge these riggers or classify them under that latter class of helpers, steam-fitters' helpers, or did you classify them under the class helpers generally?

A. I classified them under the term "helpers" generally.

Q. That is what I wanted to know. That is, the riggers' time [1343—1255] on this bill is included in the 10,027 hours? A. Yes, that is right.

Q. The time-book sheets make a distinction be-

(Testimony of Richard W. Curtis.)

tween steam-fitters and steam-fitters' helpers, and pipe-fitters and pipe-fitters' helpers. I suppose you in the bill lump those two classifications as steam-fitters.

A. Steam-fitters. That is the proper term.

Q. Can you think now of any other discrepancy or difference between Schedule 1 and the time-book sheets as disclosed by your checking up of a few days ago?

Mr. FRANK.—I object to that as assuming that there are discrepancies between the two.

A. No, I cannot.

Mr. McCLANAHAN.—Q. What is that?

A. I do not remember of any detail, no.

Q. Let me see if I can help you out on that. I believe you said that you are quite sure that the bill purports to be a reproduction made from the time-book sheets?

A. Yes, inasmuch as I made a draft of the time off the time-book sheets. I might have made mistakes; that matter is open to error.

Q. Will you turn to your time-book sheets of September 17, the last page of that date; did you make a mistake when you incorporated that page which purports to set forth work done under 5295 in your bill?

A. I can't recall on the work on this sheet now so far as the items or anything in it is concerned on the sheet.

Q. Well, that sheet was incorporated in that bill, was it not? A. Yes, sir.

(Testimony of Richard W. Curtis.)

Q. And I ask you if you did not make a mistake in so doing.

A. No. To the best of my knowledge, no.

Q. Now, will you please turn to the first sheet on that same [1344—1256] date, September 17; have you got it? A. Yes.

Q. Do you not recognize that there is a duplication of the time charged under 5295 on that sheet? In other words, 5295 on the first sheet shows precisely the same number of men, the same number of hours, the same classification, as the sheet which you first had your attention called to.

A. I cannot recall that now, only I do know that the time that was made up, why, we checked it over and found it correct. I don't know under what conditions the men worked, to pass upon that thing now.

Q. Mr. Curtis, do you fail to recognize that there is a duplication of a charge there?

A. I couldn't say that there is.

Q. That is, you fail to recognize it?

A. Yes, I fail to recognize it.

Q. On what ground? What is your reason for failing to recognize a duplication of charge? The men's names are the same, are they not?

A. The men's names might be the same but they might have worked a day and then the night, and then they might have been divided.

Q. Don't you recognize, Mr. Curtis, that there appears on September 17 night work?

A. Yes, I see that there is night work.

(Testimony of Richard W. Curtis.)

Q. What is your explanation that this duplication, seemingly duplication, comes under night work?

A. I can't recall it now, as to what that is, clearly. It depends upon how they split the gang up. I could not tell you unless I was right there at the time how the gang was split up. You see, they might have worked all day and split up at night.

Q. What do you mean by split up?

A. I mean start them again at night; that is what I mean.

Q. Would you even suggest that these men would work as shown on the first sheet for the time that they worked on that sheet, [1345—1257] and then again at night work for the same time?

A. Yes, I have often seen that.

Q. How would you account for the men working ten hours straight time in the morning and being credited with ten hours straight time, and in addition being credited with two hours overtime, and then at night the same men being credited with ten hours straight time and two hours overtime? How do you explain that?

Mr. FRANK.—I object to that. The witness is not called upon to argue the matter. He has testified that he checked it up at the time and that it was agreed between him and Putzar at the time it was correct, and unless he has a recollection upon the subject, I think he is not called upon to argue with you the possibilities or probabilities. If it is a duplication, Mr. Putzar is at your command any

(Testimony of Richard W. Curtis.)

time to straighten it out for you; he is your man.

A. I do not know, because I can't recall the thing, the incident, at all. And just as I stated before, it is how they split the gang up, I would not know.

Mr. McCLANAHAN.—Q. Mr. Curtis, that would be impossible, would it not? A. What?

Q. For men to work twenty hours straight time in one day?

A. If they were working the day and the night.

Q. Is that your serious answer?

A. I don't know, I can't recall it. I don't know under what conditions they worked.

Q. I am not asking you to recall anything. I want to know whether it is your serious answer that a man can work twenty hours straight time in one day.

Mr. FRANK.—I instruct the witness he is not called on to argue the thing with the counsel at all. The witness is to testify to facts; if counsel wants to argue it he can argue it himself.

Mr. McCLANAHAN.—Q. Answer the question, Mr. Curtis. [1346—1258]

A. I have seen men work all day and all night.

Q. True. But I am asking you if it is your serious answer or suggestion that a man can work twenty straight hours in one day.

A. I have seen men work twenty-four hours.

Q. Well, now, I have used—

A. (Intg.) That is night and day.

Q. I have used the word "straight" in its techni-

(Testimony of Richard W. Curtis.)

cal sense. You understand the difference between straight time and overtime, don't you?

A. I understand.

Q. That is what I refer to. Can a man work twenty straight-time hours in one day?

A. Well, what do you consider a day?

Q. Twenty-four hours.

A. I have seen men work twenty-four hours, a day and a night.

Q. That is not an answer to my question, and you know it, Mr. Curtis.

A. I have not seen a man work twenty hours in a day—what I consider a day is from 7 o'clock to 5 o'clock.

Q. On one single day of twenty-four hours, is it possible for a man to work twenty straight hours, using the word "straight" in its technical sense as distinguished from overtime?

A. Oh, twenty straight hours?

Q. Yes. In other words, after a man has worked ten hours straight time, isn't all the time that he works over that in one day overtime?

A. Yes.

Q. Will you turn to the sheet of August 26th, the night sheet of that date? You have it, have you, Mr. Curtis? A. Yes.

Q. I want to call your attention to an error that appears on that sheet and ask you if you have discovered it—have you discovered any error there?

A. Yes. I see there is five men, six helpers—there is time for five of them, I believe.

(Testimony of Richard W. Curtis.)

Q. You discovered that, did you?

A. I knew that at the time; yes. [1347—1259]

Q. Did you charge us with five or six?

A. Just for the five.

Q. With the five? A. Yes.

Q. Will you just turn to August 29th on your time-book sheets which have been marked your Exhibit No. 3?

A. Which sheet do you want?

Q. I call your attention to the word "night," which seems to be an insertion on the first page which you have numbered 13, and ask if you have put that word "night" there?

A. I did, yes, when I was checking up with the bill, I did that.

Q. I call your attention on the same page lower down to the word "night" dittoed twice; did you do that? A. Yes.

Q. What for?

A. When we were checking up the time-cards.

Q. When "we were." Who is "we"?

A. I mean the clerk and I were checking up the time-cards just as a matter of information.

Q. I thought you had checked up the time-cards with Mr. Putzar before.

A. I mean these sheets; excuse my mentioning these time-cards; I mean these sheets.

Q. When you were checking up these sheets with what? A. To make out the bill.

Q. What were you checking them up with?

A. With the time-cards.

(Testimony of Richard W. Curtis.)

Q. Had you not checked up the sheets with the time-cards before you made out the bill or before you commenced to make the bill?

A. To explain these marks on these, after the bills had been rendered to the Matson Navigation Company there was a talk about making a segregation, and we tried to make a segregation and these marks that you see here are in our endeavors to make a segregation.

Q. Where did you get the data that prompted you to put this word "night" on that sheet in two places?

A. Well, it was, you [1348—1260] might say, a guess at it, because it was some time after the work was done.

Q. What was it put there for? What was the word put there for?

A. Well, I couldn't recall the exact reason it was put there for. We were trying to make a segregation. I can't recall that now. It has been some time ago.

Q. You told me originally that the word was put there when you were making out the bill.

A. Well, what I meant to say was the Matson Navigation Company wanted a segregation, you understand, and my intentions were to go over it and try to make out a segregation, make out new bills.

Q. I do not quite follow you. What is the placing of "night" on day work? How is that going to make out a segregation?

(Testimony of Richard W. Curtis.)

A. Well, I do not recall the exact incident or why I put that on there; it is two years ago, and I don't remember.

Q. Well, all right; we will pass that for the present. Turn to the sheet of August 30th. I will call your attention to the word "housing," the word "eng." followed by the word "housing," following by the word "eng.", and ask you if you did not put that there? A. Yes, sir.

Q. What for?

A. We were trying to make a segregation.

Q. On the same occasion?

A. The same occasion.

Q. Can't you make that a little clearer? Where did you get your data from that you used in putting those words there?

A. We went to the men that worked on the job and tried to get them to remember what part or piece they worked on those days.

Q. When did you do this?

A. That was after the bills were in, the job had closed, and after they were in the Matson Navigation Company's office, the bills were sent in.

Q. That was some months after?

A. It was some months after. [1349—1261] They wanted a segregation.

Q. Wanted a segregation of what?

A. Wanted a segregation to see if we could segregate the work that was done in addition to the list or the changes from the list.

Q. That is, they wanted a segregation from the

(Testimony of Richard W. Curtis.)

original specification?

A. Well, the list—I don't know whether it was the specification or not.

Q. The original list? A. The list; yes.

Q. The Matson Navigation Company wanted you to take Schedule 1, containing the long enumeration of work done, and have you take out of it the items of labor and material that did not appear in the original list? A. Yes, sir.

Q. And that you attempted to do?

A. We attempted to do.

Q. In the way that you have suggested?

A. Yes, sir.

Q. Did you fail? A. We did fail; yes.

Q. And you went at it in the way suggested by going to see the men and asking them if they could remember the work?

A. Yes. That was three or four months after that, if they remembered the exact detail that they did or performed.

Q. All right. I will return to that in just a moment. While I am on that subject, however, I will ask you were the time-cards destroyed at that time?

A. Well, we didn't pay any attention to the time-cards that I can remember. I don't remember whether we did check up with the time-cards. The time-cards did not contain all the details.

Q. That is not an answer to my question. Were the time-cards destroyed at that time?

A. I don't remember whether they were all

(Testimony of Richard W. Curtis.)

destroyed or not—some parts there were—I don't remember whether *there* were or not. You are asking me of details for two years back. It is pretty hard to remember these things. [1350—1262]

Q. I call your attention to the sheet of September 1, your number 21, and ask you if you can explain the change in the hours there after the operator whose number was 357, and who was a machinist's helper working on the shaft.

Mr. FRANK.—What is the change? What change do you refer to?

Mr. McCLANAHAN.—Just what I said.

Mr. FRANK.—What is the change?

Mr. McCLANAHAN.—Don't you recognize that there is a change there?

Mr. FRANK.—I want to know what change you are referring to.

Mr. McCLANAHAN.—I am referring to the change in the hours worked opposite that number.

Mr. FRANK.—I do not see any.

Mr. McCLANAHAN.—If there is no change there let the witness say he sees no change.

Mr. FRANK.—Is that so? But you say there is a change. He is entitled to know what that change is.

Mr. McCLANAHAN.—On its face it shows a change. That is as definite as I can put it.

Mr. FRANK.—It is not.

Mr. McCLANAHAN.—I beg your pardon.

Mr. FRANK.—You can refer to what you consider a change and let it go into the record so that

(Testimony of Richard W. Curtis.)

the Court will know what you are talking about.

Mr. McCLANAHAN.—Mr. Curtis, can't you answer the question?

A. I see opposite No. 357 a ring running around the hours overtime and the figure 10 placed there above the 18.

Q. How much overtime does that sheet now show for that man? Any? A. No.

Q. How much overtime have you allowed in the bill?

A. None. I have charged the straight ten hours.
[1351—1263]

Q. Charged the straight ten hours?

A. Yes.

Q. You remember that, do you? A. Yes.

Q. Is that the reason you put the ten in the circle there?

A. I did not put the 10 there that I know of. I can't recall the 10 being put there by me.

Q. But you can recall that you did not charge the 18 hours which is shown in the total column?

A. Certainly, because it is struck out; it has a ring around it.

Q. Mr. Curtis, I call your attention to the second sheet of September 1, which is numbered 22 by you, and ask you if you added to that sheet, at the bottom, "one air tool, 10 hours." A. Yes.

Q. Why?

A. Well, when we were trying to make a segregation I placed that down there at that time so as to

(Testimony of Richard W. Curtis.)

have it before me when I was going through the sheets.

Q. When the Matson Navigation Company asked for the segregation?

A. Yes. You see that it calls for the iron worker and the air tool for scaling.

Q. Was this 10 hours included in the bill?

A. The 10 hours is just the operator, and the air tool is charged for 10 hours.

Q. I am asking you if the air tool which you have placed on that sheet was included in the bill.

A. It is included in this item here.

Q. Up above?

A. That was put down as a mere check for the upper figure.

Q. A check in what way?

A. The number of hours of the air tool, the operator was running that air tool.

Q. Did that show on the original entry?

A. Well, it did in a way, and in another way we put it down there so that we could check back on it; we were making a segregation at that time.

Q. By the way, what became of the segregation that you were [1352—1264] making?

A. I did not complete it.

Q. Why not?

A. Well, I could not complete it.

Q. Perhaps you went at it wrong.

A. You will have to show me.

Q. I call your attention to the sheet of September 1 at night, being your sheet No. 23, and ask you if

(Testimony of Richard W. Curtis.)

you inserted the word "housing" there?

A. Yes, sir.

Q. For the same purpose?

A. For the same purpose.

Q. And you secured the data in the same way from the men?

A. Yes, sir. They said, "Well, I guess that I worked a certain length of time on it."

Q. On what?

A. On that housing—on that part that I inserted in there.

Q. The time-card shows that it was an engine that they had been working upon.

A. Well, they were working on the housing of the engine.

Q. The housing of the engine? A. Yes.

Q. How was that to be segregated? From what was that to be segregated? What is the difference between working on the engine and on the housing for the engine? One under a contract and one an extra?

A. No, it was not. One was on the list and one was not.

Q. What was on the list?

A. Well, I can't recall now; it is two years ago. I know that there were changes from that list and we were trying to arrive at a segregation of those changes.

Q. I call your attention of September 3d, your No. 28, and ask you if you inserted on that sheet in the numerous places the job number 5325.

(Testimony of Richard W. Curtis.)

A. Yes.

Q. When?

A. When we were trying to make the segregation.

Q. Why did you insert the job No. 5325 there?

A. Well, we used these numbers as a matter of convenience, to try and use it numerically wherever you could handle your time or numbers so that [1353—1265] it is better and easier for you to make a segregation, could refer to them as numbers instead of making a division, and then you go through it again and check it up.

Q. So that there was a certain class of work commenced on the “Hilonian” that would come under job No. 5325; is that right?

A. This segregation that I was using these numbers 5325 for was altogether independent of the number that was originally put in; that is, I mean like trying to make a segregation for 53 through 5325—

Q. (Intg.) Will you please answer my question? 5325 was the number which was given to work to be performed on the “Hilonian”? A. Yes, 5325 was.

Q. And your explanation of the next sheet of September 3d at night for the insertion of the 5325 is the same, is it? A. Yes, it is the same.

Q. And it is the same for September 4th, is it?

A. Yes, sir.

Q. The daytime, your sheet No. 30? A. Yes.

Q. And for your sheet No. 31, September 4th, at night? A. Yes.

Q. And for your sheet of September 5th?

A. Yes, sir.

(Testimony of Richard W. Curtis.)

Q. And the 6th; is that right?

A. The 5th and 6th, that is correct.

Q. And the 7th? A. Yes, sir. [1354—1266]

Q. And the 8th? A. Yes, sir.

Q. And the 9th? A. Yes, sir.

Q. And the 11th? A. Yes, sir.

Q. And the 12th? A. Yes, sir.

Q. I call your attention again to the sheet of September 11th, where you have inserted the number 5295 under the original number as shown by the bill, 5325. Can you explain that?

A. I did that for the purpose of trying to reach a segregation.

Q. That is, you found that the work under 5325 as shown on that sheet, came under the original specifications or list of work?

A. No, sir, not in the manner. What we did do was to try and take each paragraph in that bill and put it under one number, and the others under another number, so as to try and get a separate charge for each item.

Q. I call your attention to the sheet of September 17th, your number 71, and ask you if you added the word "foreman." A. Yes, sir.

Q. After the operator, number 5325?

A. Yes, sir.

Q. Why?

A. Because he was the foreman on the night shift.

Q. How were the foremen of the United Engineering Works at that time paid?

Mr. FRANK.—That is immaterial. It is already

(Testimony of Richard W. Curtis.)

admitted that the charges that were made for these different men were the correct charges for those different employments?

Mr. McCLANAHAN.—Answer the question.

A. The foremen were all paid by the hour, with the exception of a few.

Q. And they were paid how?

A. By the month, and then they were on a regular monthly salary, a certain average per month.
[1355—1267]

Q. What foremen were under regular salary?

Mr. FRANK.—This whole line of examination is objected to as immaterial.

A. I cannot recall now because some worked on time and have since been put on salary and *vice versa*.

Mr. McCLANAHAN.—Q. So you cannot segregate now the foremen that worked on the “Hilonian” under salary from those that worked on a day wage?

A. No, sir, not at the present time.

Q. By the way, Mr. Curtis, to change the subject, where did you look for those machinists that you testified to on your direct examination?

A. Where did I look for them?

Q. Yes. Did you look at any of the Machinists’ Unions for their address?

A. I looked to the walking delegates. I did not go direct to the union. We have the delegates around the shop. They told me where they were employed and I went to those places.

(Testimony of Richard W. Curtis.)

Q. You did not go to the headquarters?

A. A walking delegate generally has a list of men, where they go to.

Q. I thought I would give you the name and address of one of the men that I found myself.

Mr. FRANK.—Give it to us.

Mr. McCLANAHAN.—Mr. G. H. Dunn, who has lived for several years at 38 Helen Street in Oakland.

A. I spent considerable time looking these men up at night-time.

Q. You recognize, Mr. Curtis, that an operator is not entitled to overtime until he has worked his full straight time?

A. An operator is not, as a general rule.

Q. What is the exception?

A. There are exceptions when it [1356—1268] may have been agreed upon.

Q. Between whom, the man and the factory, or the shop?

A. The man and the factory or the man that owns the job or runs the job. Those things vary.

Q. Was there any agreement in this “Hilonian” job with reference to that matter?

A. I cannot remember any. I do not remember any.

Q. Are you aware that that time-book has innumerable instances where a man is allowed overtime before he has worked his straight time?

A. It may be.

Q. Are you aware of that?

A. I have noticed where men have been on the

(Testimony of Richard W. Curtis.)

night shift that some men have received overtime.

Q. Before they have worked their straight time?

A. They have worked straight time on some other vessel, or some other job, and been called on at night. Unless it is by agreement, if we force that man to work at night they would pay the overtime.

Q. So that when a man works on a ship other than the "Hilonian" his straight time during the day, and is put on the "Hilonian" at night, he is allowed overtime? A. He would be, and on any other vessel.

Q. And that overtime is charged in this bill to the Matson Navigation Company?

A. If such was the case it is. It would not be so unless somebody ordered it.

Q. Do you attempt to account for all of the overtime allowed on this bill where the man has not worked his full quota of straight time on that hypothesis?

A. I do not remember the conditions now, but at the time I knew they were right. I cannot recall the conditions now. [1357—1269]

Q. Don't you think that we are entitled to an explanation of that kind of charge?

A. The explanation was made and settled with the timekeeper, as it always is.

Q. Tell me now about it. What was it?

A. I do not recall the instance. I know all of the time is settled at the time with the timekeeper. These things are explained, and they agree. It has always been the custom.

Q. What thing is explained. This question of a

(Testimony of Richard W. Curtis.)

man working on another ship, and coming to the "Hilonian" and being paid overtime on the "Hilonian"?

A. I do not remember the exact details of that character. I do know if a man is ordered on a ship at night it is by somebody's orders that represents the ship.

Q. Would the timekeeper have any authority to order a thing of that kind done?

A. I do not go further than the timekeeper. I just deal with the timekeeper.

Q. What is your idea of the duties of a timekeeper on a ship?

Mr. FRANK.—I do not know that you should go into that, what the timekeeper's duties are.

Mr. McCLANAHAN.—I should like to have the witness testify.

Mr. FRANK.—What difference does it make what the timekeeper's duties are. He has told you over and over again the matter was gone over with the timekeeper and settled with him at the time. Do you expect to go behind the settlement made with the man authorized?

Mr. McCLANAHAN.—You expect us to pay this bill on that statement?

Mr. FRANK.—On the statement of your timekeeper that [1358—1270] it is right. If you do not do that what do you put a timekeeper on for?

Mr. McCLANAHAN.—We will explain what he is put on for.

Mr. FRANK.—It would be impossible to deal with

(Testimony of Richard W. Curtis.)

you folks under any circumstances if that is the case.

A. Well, the duties of a timekeeper are to keep the time in just as thorough a manner as he knows how, and to check up with the people that are doing the work for him.

Mr. McCLANAHAN.—Q. Anything else.

A. That is all; they handle the time.

Q. That is all?

A. They handle the time. That is, they check up the time and see the men are working on the ship, where they are, and where they come from, who they are, and how long they worked.

Q. Even according to your view of the duties of a timekeeper Mr. Putzar would have no right to enter into a contract by which he would agree to bind the Matson Navigation Company to pay overtime before the man had worked straight time on the “Hilonian”?

A. No, sir, I don’t know the authority of Mr. Putzar. I know he was timekeeper, and I do not go further than that.

Q. Without going in detail into the numerous instances found in the time-book where overtime is allowed, before the man has worked straight time, I will ask you if you recognize that the time-book does contain such entries?

Mr. FRANK.—The time-book speaks for itself.

A. I do not remember.

Mr. McCLANAHAN.—Q. You do not remember?

A. There are instances there that such is the case.

(Testimony of Richard W. Curtis.)

I could not recite them though to you. [1359—1271]

Q. That is all I ask you. Will you turn to the time-book sheet of September 16th. I call your attention to the sheet of September 16th, your number 67, and to the entry under job number 5325, of W. Ross, an electrician whose shop number is 322. The sheet calls for seven hours straight time. I call your attention to the next sheet, which your sheet number 68, under job number 5346, the same operator, W. Ross, whose number is 322, working 4 hours straight time, and ask you how you explain that.

A. I cannot explain that at the present time, but at the time this was made out and checked up I knew that to be right. Whether he divided that overtime or not is a small matter of extending an hour or two hours as overtime. The total number of hours is right.

Q. You remember that particular instance?

A. I remember that I checked all these sheets at the time. I did not split hairs whether a man extended an hour out in the overtime column or not.

Q. In making up the bill you gave that man credit for 11 hours straight time, did you?

A. I charge you with 11 hours as it reads there on the sheet.

Q. Straight time? A. Yes, sir, straight time.

Q. Now, will you turn to the sheet of September 23d. I call your attention of the sheet of September 23d, being your number 86, to job number 5396, where J. Hurley, foreman, is allowed 5 hours, and

(Testimony of Richard W. Curtis.)

C. Petersen, an iron worker, 5 hours, and ask you if you can explain why those were charged to the Matson Navigation Company?

A. I cannot recall that at the present time. I knew at the time that it was right. I could not tell you now the reasons for it. [1360—1272]

Q. You are sure that they were charged and are right? A. Yes, sir, they checked it up.

Q. Do you not recognize, Mr. Curtis, that 5396 is not a "Hilonian" number?

A. It may be that the number was placed wrong on the sheet. I did not check to that number in particular. I checked to the card.

Q. You made out the bills from the sheets, did you?

A. I did, yes. I charge you with that 5 hours foreman, and 5 hours for the iron worker.

Q. Even though the time-sheet shows that the work was done under a number that is not a "Hilonian" number? A. That is a small error; yes.

Q. What is an error? The charging or the placing of the number?

A. The placing of the number.

Q. Perhaps the charging is an error?

A. No, sir, that could not be, because we checked up personally.

Q. It is in your handwriting? A. Yes, sir.

Q. Turn to the sheet of August 23d. Do you know what the bilge injection referred to on that sheet is?

A. I cannot tell you at this time, no.

Q. Do you know what the bilge injection is?

A. I know what the bilge injection is, yes.

(Testimony of Richard W. Curtis.)

Q. Is it not connected with the circulating-pump?

A. Yes, sir, as a general rule it is.

Q. Is that a proper charge to be incorporated in schedule No. 1?

A. I could not tell you from the words "bilge injection" just what that man performs at the present time, just what work he did on that bilge injection. I knew at the time, and so did [1361—1273] your timekeeper when he checked it up. At the present time, after two years I cannot remember what were the duties performed in that bilge injection.

Q. Ordinarily, if there was work performed on the bilge injection, it would come under the circulating-pump contract, would it not?

A. No, sir, I do not remember as to the extent of that contract.

Q. I will ask you to produce it. We will see the extent of it when you produce it. Mr. Curtis, have you ever checked up the number of nights that work was done on the ship as shown by the time-sheets?

A. I do not remember as I did.

Q. You do not remember that you have done that?

A. No, sir, I have checked it in a general way. I do not know that I made a specific check right on the night. I have gone through the entire thing as a total.

Q. You would have to know the number of nights in order to make a charge for the power house, would you not?

A. Well, I would and I would not in this case, because there might have been nights that the night-

(Testimony of Richard W. Curtis.)

gang was not working at all. We were furnishing power to the ship.

Q. What for? A. For electric lights.

Q. For electric lights?

A. Yes, sir, and for the crew aboard the ship at that time; for the different members aboard the ship.

Q. That is a subdivision, is it?

A. No, sir, I knew at the time that she was being furnished with electric lights. I could not go into details now and tell you the reason why she was furnished.

Q. I am not asking you that. I say, you knew she was furnished with electric power on nights when your operators did not [1362—1274] work on the ship?

A. If they did not work, yes. I knew that she was furnished with power. I could not give you the exact dates right now offhand.

Q. She was furnished with power when no work was done on the ship by your operators?

A. Yes, sir.

Q. Will you turn, Mr. Curtis, to the time-sheet of August 30th? A. Yes, sir.

Q. I call your attention to the operator, whose number is 315, whose name is W. Thomas, machinist working with the air-tube, where the charge is 10 hours straight time and 9 hours overtime; is that a correct charge?

A. Yes, sir, we checked it up at that time.

Q. That would mean how many hours that that man would actually work out of the 24?

(Testimony of Richard W. Curtis.)

A. Well, he would work all day, and he would work that portion of the night.

Q. How many hours would he work continuously?

A. He would work 19 hours continuously.

Q. Now, I call your attention to the sheet of the next day.

A. (Intg.) Of course you have got to bear in mind that 10 hours is placed here for an 8½ hour day.

Q. I understand that. I call your attention to the sheet of the next day, which is August 31st, where the same operator, W. Thomas, No. 315, worked 10 hours straight time and 3 hours overtime. Is that a correct charge?

A. Yes, sir, that must have been a correct charge as we checked it up at the time and decided that it was right.

Q. That is, after working on the 30th for 19 hours, he works how many hours the next day?

A. 10 hours the next day. I have seen men work 48 hours.

Q. He worked more than 10 hours?

A. He worked into the next night. [1363—1275]

Q. Mr. Curtis, why on the time-sheets, do you allow the foreman one hour more than the man on the night-shift?

A. The foremen stay and check up with the day foreman and he must have been on an hour longer because we checked up with the timekeeper and it was decided that that was the right time.

Q. Checked up with what timekeeper? Mr. Putzar? A. The timekeeper aboard the ship.

(Testimony of Richard W. Curtis.)

Q. Mr. Putzar?

A. Mr. Putzar was the timekeeper; yes.

Q. Was Mr. Putzar on the ship at night?

A. I have seen Mr. Putzar around the ship at various times.

Q. Answer my question, please. Was Mr. Putzar on the ship at night?

A. I have seen Mr. Putzar on the ship at night.

Q. Were you on the ship at night.

A. I was over there one night when this man Knight was injured.

Q. On the ship, were you?

A. I was in the confines of the yard.

Q. But you were not on the ship?

A. No, sir, I was not on the ship.

Q. So that you did not see Mr. Putzar on the ship?

A. No, sir, but I saw Mr. Putzar in the yard.

Q. So you do not know whether Mr. Putzar was on the ship at night?

A. You see I was not there at night. I saw him at various times there.

Q. I call your attention to the sheet of September 12th, which was Sunday, where the following workmen are allowed double time of 48 hours on that day: Thomas Bayhen, whose job number is 539; W. Schmidt, whose job number is 318; J. Johnstad whose number is 519; J. Sullivan, No. 353; E. McCabe, No. 546 and C. Holten, No. 536, and ask you if that is a proper charge? [1364—1276]

A. Yes, sir, it is a proper charge. It was checked up at the time.

(Testimony of Richard W. Curtis.)

Q. Do you think those men worked that time?

A. This was on a Sunday.

Q. I am aware of that.

A. They got double time. They worked all day and all night.

Q. Did they not stop for meals at all?

A. The custom has been over there in a rush job to send the men out as the opportunity affords; that is, they run across the roadway and get a glass of beer and a sandwich and come back. It takes them probably 8 or 10 minutes. If we were to dock them for the full noon hour or dinner hour, they would say "We will sit down and take our hour then." It is a benefit to the ship to get the ship out on time.

Q. I call your attention to the credit given to H. Hodgkins, whose shop number is 503, on the same day. You will find that he is credited with 28 hours double time under job number 5325, and with 20 hours double time under job number 5295, on the same day. How many actual working hours would that be on that day?

A. Taking an interpretation of the sheet as it stands now, without knowing the exact conditions, I would say he worked all day and all night on Sunday.

Q. That is, he worked 24 hours continuously?

A. Yes, sir.

Q. Do you think that is possible? A. Yes, sir.

Q. There is a difference between an iron worker and a helper, is there not, Mr. Curtis?

A. There is a difference between an iron worker and a helper.

(Testimony of Richard W. Curtis.)

Q. And they are paid differently, are they?

A. They are paid differently; the rates vary you know on the ability of the man. [1365—1277]

Q. The iron worker is paid more than a helper, is he?

A. Iron workers are paid more than a helper.

Q. Now, will you turn to the sheet of September 17th. I refer you to the entry there of C. Schmidt, under shop number 355, where he has been shown to work as an iron worker for 8 hours.

A. What sheet is that?

Q. September 17th, No. 355. As an iron worker he is shown to work for 8 hours. Have you got that?

A. Yes, sir.

Q. That was on your sheet No. 72. Now, on your sheet No. 73, on the same day, I call your attention to the same man working as a rigger for 2 hours; can you explain that?

A. September 17th he worked as a rigger. On this September 17th, page 72, he worked cementing in the tanks.

Q. Is he not classified as an iron worker?

A. He is classified as an iron worker.

Q. Can you explain why he is classified as an iron worker and a rigger on the same day?

A. He worked 2 hours as a rigger, and when he worked as a cement worker he used hand tools and so forth in cementing, and there was an additional charge made for that; in other words, he is charged as an iron worker.

Q. You say he worked on cementing the tanks or

(Testimony of Richard W. Curtis.)

cleaning the tanks?

A. They were cementing at that time; both cleaning and cementing.

Q. Is not the record cleaning and not cementing?

A. That may be. It says "cleaning" there; it might have been cutting out cement.

Q. How did you charge the Matson Navigation Company?

A. We charged the Maston Navigation Company with Schmidt for 2 hours for a rigger and 7 hours as an iron worker. That is the custom. [1366—1278]

Mr. FRANK.—Q. 7 or 8? A. 8 hours rather.

Mr. McCLANAHAN.—Q. Will you please turn to the time-sheet of September 20th? I call your attention to the pipe-fitters shown on your sheet, No. 80, of that date, the numbers of the men being 403, 407, 401 and 408, and ask you what was the character of time worked by those men that you charged to the Matson Navigation Company, straight or overtime?

A. That is just carried out as a total. It is evidently overtime. I knew it was right at the time it was checked up. I cannot recall the exact time or the incident that those men worked, or under the conditions that they worked.

Q. The charges do not conform with the general method pursued in keeping time in the book?

A. Of course there are personalities about this thing in a little way, in a man keeping time, but that is the total time for that man.

Q. Did you call Mr. Putzar's attention to these

(Testimony of Richard W. Curtis.)

personalities? A. Mr. Putzar checked this sheet.

Q. He checked that sheet?

A. He knew that the total was right.

Q. He checked that sheet from the time-cards?

A. Yes, sir, and from his handbook.

Q. You keep referring to the handbook. I understand you never saw it but once, did you?

A. No, sir, but he spoke about it a great many times to me; that is, whenever I would meet him, if there was any controversy came up he would say "my handbook says so and so." That is the reason I refer to it.

Q. However, you did see the handbook once?

A. I did see the handbook.

Q. What did it look like?

A. I cannot recall the size of it, or the shape of it.

[1367—1279]

Q. That was on the inception of the work?

A. I saw it afterwards, too, when she was over here on this side.

Q. Then you saw it twice?

A. I saw it twice; yes, sir.

Q. Did you examine it when the ship was over here on this side?

A. I did not look into his handbook at all.

Q. You just saw it lying somewhere?

A. He told me it was the handbook that he kept the time in. As a timekeeper I do not interfere with another man's record.

Q. I call your attention to the sheet of September 12th, to the entry under 355, C. Schmidt, rigger.

(Testimony of Richard W. Curtis.)

How many hours did Schmidt work on that day?

A. Schmidt, I think, worked 34 hours, that is, with his overtime.

Q. That would be how many hours of actual work, 17? A. 17, yes. It would be 17.

Q. I call your attention to the entry on the sheet of September 13th, your number 55, to C. Schmidt, and ask you how many hours he worked that day.

A. C. Schmidt worked 10 hours straight time and 15 hours over.

Q. That would be a total of $23\frac{1}{4}$, would it not?

A. No, sir, 15 hours at night. He worked straight all night.

Q. And how many hours were allowed for him?

A. 15 hours; double time at night.

Q. How many for the day?

A. 10 hours for the day.

Q. He was allowed 15 hours for the night work doubled, was he? A. Yes, sir.

Q. 30 hours? A. Yes, sir, and 10 for the day.

Q. That would be 40 for that day?

A. That would be 40 for that day. [1368—1280]

Q. Now, will you turn to C. Schmidt, under September 14th, the next day. How many hours was he allowed that day?

A. He worked 10 hours in the day, and 15 hours at night. He was allowed for the total day and night 40 hours.

Q. Would it be possible, do you think, for that man to work three consecutive days that many hours?

A. Yes, sir, I have seen it done.

(Testimony of Richard W. Curtis.)

Q. How much, Mr. Curtis, would that allow off for meals, and sleep in three consecutive days?

A. I have seen men work three consecutive days without sleep.

Q. And without eating?

A. Well, just as I explained to you before, when there is a rush job over at the United Engineering Works they allow the men off as they can spare them; they go across the roadway and get their meals, whatever the meal might be—what I call a hand-out—a glass of beer and a sandwich—and they come back and immediately go to work. That helps the ship out. If we were to take the meal time out of that man he would say, “I will take my hour and will not work until my hour is up” and that would delay the ship.

Q. It is apparent to you, is it not, that this man C. Schmidt was a rigger and not an iron worker?

A. The man, C. Schmidt, is a rigger. We have men like C. Schmidt that also could be used as a cement worker. He is experienced in that line. When we work him as a cement worker there is an additional overcharge to the cost of that man as he uses hand tools. We contend that as that man performed the cementing work properly he was an iron worker. That is in the tanks.

Q. Mr. Curtis, for the time being I will leave the time-sheets alone. I understand that when work came in to the shop you [1369—1281] furnished the different foremen with a copy of it, having numbered it? A. Yes, sir.

(Testimony of Richard W. Curtis.)

Q. And kept a copy yourself in the office?

A. Yes, sir.

Q. Do you destroy the copy that you keep in the office? A. Yes, sir, we destroy all that.

Q. What for?

A. Well, it is of no use to us. The copy of the bill is our original form of entry.

Q. Do you destroy them at once after the work is finished?

A. Yes, sir. Just as soon as the consolidation is made, or the bill is gotten up and the heading made out, we destroy those things right away.

Q. Suppose the work is done under specifications, and under an agreed price. Do you destroy the specifications as soon as the work is done?

A. Yes, sir, we destroy these specifications.

Q. What for?

A. It is accumulated stuff that is of no interest to us.

Q. I ask you if you destroy it at once.

A. Yes, sir, as a general rule we do.

Q. Did you in this case destroy the original lists of work that came to the shop?

A. Well, I do not know what the original list of work is. At the present time the only list that I saw was the list that the engineer had.

Q. Where did he get it? A. I do not know.

Q. What engineer?

A. The engineer of the people that were having the work done on the "Hilonian."

Q. What engineer; what is his name?

(Testimony of Richard W. Curtis.)

A. Mr. Putzar had a list.

Q. Don't you know where he got it?

A. I don't know; no.

Q. You did not have a list like that?

A. I did not; no. [1370—1282]

Q. If such a list had been in the office of the United Engineering Works, you would have known of it?

A. Well, if such a list came in immediately for that work to be performed I, as a general rule, would know it.

Q. You would know about it? A. Yes, sir.

Q. What was the list that you did have that came into the office first to which you attached No. 5295?

A. The engineer had a list.

Q. Is that the list that you attached 5295 to?

A. Yes, sir.

Q. So, then, Putzar's list that you say he had was the same as the list which came into the office first, to which you put 5295?

A. I did not see any list that came into the office until I was across the Bay, and the engineer or representative of the Matson Navigation Company presented a list of the work that was to be performed on that vessel.

Q. Well, what list was it that you attached 5295 to? A. I made a copy of that list.

Q. You made a copy of that list? A. Yes, sir.

Q. Where. Over there? A. Yes, sir.

Q. Where is that list? A. That is destroyed.

Q. You destroyed it? A. Yes, sir.

Q. Did you not know when you destroyed it that

(Testimony of Richard W. Curtis.)

it was contract work?

A. I did not know anything about the conditions, whether a contract existed on that work. All I knew was it was a list of work, and they wanted to do that work on board of that vessel.

Mr. FRANK.—I object, Mr. McClanahan, to your assuming it was contract work. We deny that it was contract work, or that there was any contract for it at all.

Mr. McCLANAHAN.—Q. Did you know Mr. Curtis, that the [1371—1283] United Engineering Works figured on that list that Mr. Putzar had in his possession when the “Hilonian” first went over to your shop?

A. I do not know anything of the details of the figuring end of the business. I do not attend to that.

Q. That is something that you do not know about?

A. It is out of my department; yes.

Q. When a contract is entered into between your people and the ship owner, what is its course through the office?

A. The mail comes in in the morning. If it is sent by mail, or if it is sent in—I do not care whether brought in or sent in by mail—it is generally referred to me. That is after we have made a subcontract for so and so, and the letter is placed on file.

Q. So that the contracts that are entered into do come under your supervision?

A. They do as far as the handling of my department is concerned, what I wish to get out of them.

(Testimony of Richard W. Curtis.)

Q. When you get a contract you place a number on it, do you not? A. Yes, sir.

Q. It is one of those serial numbers?

A. Yes, sir.

Q. By serial number, you mean each job chronologically is given a number?

A. Yes, sir, as it happens to come in the shop we give it a number.

Q. For instance, if you have given 5295 to a piece of work and another piece of work comes in, it would be 5296?

A. If it happens to be so, if the job did come in after 5295, it would be 5296.

Q. And the next job would be 5297?

A. Yes, sir. It depends on conditions.

(An adjournment is here taken until to-morrow, Wednesday, October 25, 1911, at 9:30 A. M.)
[1372—1284]

Wednesday October 25th, 1911.

RICHARD W. CURTIS, cross-examination resumed:

Mr. McCLANAHAN.—Q. Mr. Curtis, you remember that in the course of this hearing on several occasions I sought from Mr. Frank the “Hilonian” job numbers, and he disclaimed any knowledge of what they were?

A. I remember your asking him several times for the job numbers. I don’t remember the details of the answers or the questions. I know you did ask for them.

Mr. FRANK.—Am I on trial?

(Testimony of Richard W. Curtis.)

Mr. McCLANAHAN.—No. That is entirely unnecessary, Mr. Frank. You will see the drift of my examination. When it becomes personal then it is time to talk.

Q. Mr. Curtis, when the job numbers were finally furnished, you were the one who furnished them to Mr. Frank, were you not?

A. I furnished them to Mr. Frank; yes.

Q. You knew of the Court's order, did you not, requiring the numbers to be furnished?

A. I knew from Mr. Frank. He asked me to furnish him the numbers in order that he might give them to you.

Q. Did you not know of the Court's order?

A. I did not go into the details of the Court's order.

Q. That is not my question. Did you not know that we had had a hearing before the Court, and the Court had required the libelant in this case to furnish the respondent with the job numbers?

A. I understood that you went out to court to go into the technical part of it. I did not understand that at all. I knew you had to go to court and had some kind of decision relating to it.

Q. You knew that the Court required you to furnish those numbers? [1373—1285]

A. Perhaps it did. I don't know the conclusion. I only know that Mr. Frank requested me to give the numbers after you had gone out of court and had returned.

(Testimony of Richard W. Curtis.)

Q. Why did you not give him all the "Hilonian" job numbers?

A. I gave Mr. Frank all the "Hilonian" job numbers.

Q. Did you give him No. 1818 or 5528, or 5401, or 5009?

Mr. FRANK.—I object to that upon the ground that those are contract numbers. They are not job numbers included in the Schedule No. 1 at all.

Mr. McCLANAHAN.—Q. Please answer the question.

Mr. FRANK.—They are numbers which were expressly stated to Mr. McClanahan in the course of his examination as being immaterial.

Mr. McCLANAHAN.—Q. Answer the question.

A. I gave Mr. Frank all the numbers.

Q. I have asked you if you gave him those particular numbers?

A. I know I gave him the entire list of numbers. I checked it back and gave him the entire list.

Q. Did you give him those numbers that I have called back?

A. Maybe I have. I do not recall it. I tell you I went through and gave him all the "Hilonian" numbers. I do not remember the numbers in line unless you produce something to identify it right now. I looked them up from the records I had and produced the numbers of the "Hilonian."

Q. I will have to ask you to tell me what the "Hilonian" numbers are then.

A. I gave them to Mr. Frank.

(Testimony of Richard W. Curtis.)

Mr. FRANK.—You have every “Hilonian” number, Mr. McClanahan. You have the “Hilonian” numbers that I have given you for Schedule No. 1, and you have every “Hilonian” number from this witness identified by the different schedules appended to [1374—1286] the libel. I do not understand what this is. Is it a pretense that you have not got the “Hilonian” numbers, because you have every one.

Mr. McCLANAHAN.—Q. Please answer the question.

A. I do not remember them from memory; no.

Q. Where did you make inquiry in order to tell Mr. Frank what they were?

A. From my original bills.

Q. From your original bills?

A. With the exception of the numbers on Schedule 1 which are on Mr. Putzar’s time-sheets.

Q. So that you examined Mr. Putzar’s time-sheets for the numbers covering Schedule 1?

A. Yes, sir, they were on Mr. Putzar’s time-sheets.

Q. Is that the only place where they are?

A. That is the only place, yes.

Q. In the records of the United Engineering Works that is the only place?

A. Yes, that is the only place at the present time; that is, you understand that I destroyed the lists after I made up the bill that contained the different numbers.

Q. Mr. Frank knew those numbers, didn’t he?

(Testimony of Richard W. Curtis.)

Mr. FRANK.—Knew of what numbers?

Mr. McCLANAHAN.—The numbers on Mr. Putzar's time-sheets.

Mr. FRANK.—How does the witness know what I knew of?

Mr. McCLANAHAN.—Q. Answer the question.

A. What do you mean by Mr. Frank knew the numbers? I don't understand your question.

Q. Mr. Frank had in his possession the time-sheets of Mr. Putzar, did he not, during this hearing?

A. We had all the evidence up here during this hearing.

Q. Answer the question specifically. He had these sheets in his possession, did he not? [1375—1287]

A. Yes, sir, all the records were here.

Q. And all the bills, did he not? A. Yes, sir.

Q. And all that you did in compliance with the Court's order, or in compliance with Mr. Frank's request, was to simply collect off the time-sheets the numbers appearing there, and give to Mr. Frank the additional numbers appearing on the other schedules of the libel; is that all?

A. Mr. Frank did not go into details as to the numbers prior to the time that you made a demand for them that I can remember. I checked them up when he told me to get those numbers out for you. I checked them up from these records that I have.

Q. That is all you did, is it not? A. Yes, sir.

Mr. FRANK.—I should like to know the mate-

(Testimony of Richard W. Curtis.)

riality of this. If there is any intimation that I had knowledge of these numbers and withheld them, I should like to know it now.

Mr. McCLANAHAN.—The facts are there. I do not care what you make of them.

Mr. FRANK.—Then I move that it be all stricken out as immaterial. You may draw what conclusion you may, but the facts are not there showing that I knew anything about the numbers. You are assuming that I knew all about the details and how to get these numbers because the witness did. If you are trying me on this case I should like to have a specification on which to answer your allegations.

Mr. McCLANAHAN.—Q. Mr. Curtis, No. 1818 appears on Schedule 3. Did you furnish that number to Mr. Frank?

A. I furnished that number to Mr. Frank.

Q. No. 5528 appears on Schedule 3. Did you furnish that number to Mr. Frank? A. I did, yes.

Q. No. 5401 is the number given to the brake-rig contract. [1376—1288] Did you furnish that number to Mr. Frank?

Mr. FRANK.—What do you call the brake-rig contract?

Mr. McCLANAHAN.—Q. Answer the question, please. Did you furnish that number to Mr. Frank?

A. Let me see it.

Q. There it is (handing paper to the witness).

Mr. FRANK.—Q. What is that?

A. That is making and installing one brake-rig.

Mr. McCLANAHAN.—Q. Did you furnish that to Mr. Frank?

(Testimony of Richard W. Curtis.)

A. I furnished all the numbers when they were requested at that time.

Q. Answer specifically? A. Yes, sir, I did.

Q. You furnished that? A. Yes, sir.

Q. Did you 5009, which is the number appearing on Schedule 8, Mr. Frank?

Mr. FRANK.—You know, Mr. McClanahan, that all those numbers are attached to the bills in the libel that you are reading off, that they were furnished to you and furnished by the libelant. I object to this until I know what the meaning of it is.

Mr. McCLANAHAN.—Q. Answer that question.

Mr. FRANK.—One moment. I am not going to sit here and have him go into matters of this sort with the attempt impliedly to cast aspersions on me, unless it has some materiality to the case. I instruct the witness not to answer any further on this line unless instructed to do so by the Court.

Mr. McCLANAHAN.—We claim that the numbers that were required to be furnished us by the order of the Court were all the “Hilonian” job numbers covered by this libel. We claim that you did not furnish all those numbers to us, and we have therefore [1377—1289] been handicapped in the trial of this case.

Mr. FRANK.—If that is what you are talking about I say that you know that that is not a true statement of the facts, for the reason that every “Hilonian” number was furnished you and was in the libel except those that referred to Schedule 3, and those were the ones that we furnished you at the time

(Testimony of Richard W. Curtis.)

in addition. And you know, further, that during the entire examination you objected to those other numbers as being immaterial.

Mr. McCLANAHAN.—Which were the numbers?

Mr. FRANK.—The numbers on the contracts. You had every one of them. You never were for one moment handicapped in the matter, the pretense to the contrary notwithstanding.

Mr. McCLANAHAN.—That will be our claim.

Mr. FRANK.—And you make many claims that have no foundation in fact.

Mr. McCLANAHAN.—That may be so or not.

Q. Answer the last question, Mr. Curtis.

Mr. FRANK.—I object to the question as immaterial, and instruct the witness not to answer unless he is ordered to do so by the Court.

Mr. McCLANAHAN.—Q. Mr. Curtis, do you decline to answer? A. I do.

Mr. FRANK.—I am tired of these false issues. I have stood them about as long as I think I am called on to do.

Mr. McCLANAHAN.—Q. Mr. Curtis, will you please look at Schedule 8? A. Yes, sir.

Q. Can you tell me, Mr. Curtis—

A. Wait a moment until I get the schedule.

Q. Can you tell me from an inspection of that schedule, bearing the number 5009, whether it was a prior or a subsequent piece [1378—1290] of work to that covered by the original list of work on the “Hilonian” which has been referred to in your evidence?

(Testimony of Richard W. Curtis.)

A. No, sir; I could not tell you now; I do not remember.

Q. Can't you tell from the number itself whether it was prior or subsequent?

A. No, sir, I could not.

Q. It bears a serial number, does it not?

A. Yes, sir, that is true.

Q. That is prior to the serial number which the original list of specifications bore?

A. That is true.

Mr. FRANK.—You may make whatever argument or deduction you see fit from that.

Mr. McCLANAHAN.—Q. Then does it not necessarily follow that this is a prior contract?

A. Yes, sir, by the serial number it does.

Q. Now, you have here before you Mr. Putzar's time-sheets as your Exhibit 3. You have before you the libel with its different schedules bearing job numbers. Will you please tell me if No. 5298 is a "Hilonian" job number?

A. (After examination.) I do not see 5298 on Mr. Putzar's sheets. I cannot recall now whether 5298 belongs to the "Hilonian" or not. As far as I can recollect at the present time I do not think it does.

Q. I should like to have you exhaust your research, so as to be able to answer that question clearly and fully. I understood that Mr. Putzar's time-sheets were your only source of information?

A. Yes, sir.

Q. That 5298 does not appear upon the schedules

(Testimony of Richard W. Curtis.)

attached to the libel, does it?

Mr. FRANK.—They speak for themselves. You can see for yourself. [1379—1291]

A. (After examination.) No, sir. They are not on Schedule No. 1. There are no figures at all there, and on the rest of them 5298 is not there I don't think.

Q. And it does not appear on any of the sheets of Mr. Putzar? A. No, sir, not so far as I could see.

Q. Then 5298 is not a "Hilonian" job number, is it? A. No, sir, I don't think it is.

Q. Will you please tell me whether 5395 is a "Hilonian" job number?

A. 5395 is not on the schedule.

Q. And does not appear on any of the schedules attached to the libel? A. No, sir.

Q. Now, Mr. Curtis, if there have been introduced in evidence in this case time-cards or stock cards bearing those numbers charging the work or labor to the Matson Navigation Company they were improperly introduced, were they not?

Mr. FRANK.—Let me see the cards.

A. Well, I could not say that offhand. There are a great many numbers on all of those cards that do not pertain to that work.

Mr. McCLANAHAN.—Q. Should those two numbers, or either of them, or work performed under those two numbers, or material furnished, be charged the Matson Navigation Company?

Mr. FRANK.—If you have got any such numbers let us see them. Show them to us, and we will ex-

(Testimony of Richard W. Curtis.)

plain the cards. We are entitled to an opportunity to explain them if there are any cards bearing those numbers.

Mr. McCLANAHAN.—Q. Answer the question.

A. The only thing I can say about that is, I would have to see your cards that contain these numbers. I could not say off-hand what it is. There might be something about the cards [1380—1292] that might be an error in the number. So far as the work is concerned that might belong or pertain to that job. I could not tell you right offhand unless I saw the cards or the stock cards.

Q. You think that there might be stock cards that properly would be chargeable to the “Hilonian,” bearing those numbers?

A. I would not say that; no. The only stock cards and time-cards that we intended to charge to the “Hilonian” were those that bore the numbers of the “Hilonian.”

Q. So that if you have introduced other cards bearing other numbers, it was done inadvertently; in other words, you do not intend to charge the “Hilonian” with material furnished, or time furnished under those two numbers?

A. No, sir, not under other numbers outside of the schedule numbers.

Q. Now, Mr. Curtis, you have said that the labor and material found on Schedule 1 was furnished under certain numbers that you gave?

A. Yes, sir.

Q. That is correct, is it? A. Yes, sir.

(Testimony of Richard W. Curtis.)

Q. And that in making out Schedule 1 you discarded these numbers and consolidated all the work and material under that schedule, without giving it a number?

A. I did not discard the numbers. I used those numbers collectively. I used that as a serial number for that, and consolidated all the work done under these numbers in Schedule 1.

Q. You used what is a serial number?

A. These numbers that I gave were on Schedule 1 collectively.

Q. You discarded all those numbers in framing your bill. You did not put any of them on your bill?
[1381—1293]

A. No, sir, because they were on Mr. Putzar's sheets.

Q. What was your reason for doing that?

A. My reason for doing that was that there were so many changes and interchanges that conflicted one with the other with pieces that were changed and rechanged, machined and remachined to suit different conditions that arose that it was impossible to segregate and keep a segregation in work under a number, for the reason there were so many changes occurring. It would take a great number of numbers to keep track of it.

Q. These several numbers which were consolidated in Schedule 1 were placed on the lists of work to be performed by you, were they? A. They were; yes.

Q. And during the progress of the work the workmen placed those respective numbers on their time-

(Testimony of Richard W. Curtis.)

cards, did they not? A. They did.

Q. As they did work under that particular list, did they not? A. Yes, sir.

Q. What was the difficulty, then, that you found in taking Mr. Putzar's time-sheets with these several numbers attached to the work? What was your difficulty in still maintaining those numbers separate and distinct?

A. The numbers were used collectively on the job; that is, the man who had that department number used that department number—

Q. Excuse me. What department number do you refer to?

Mr. FRANK.—Let him finish his answer.

A. I mean the number that was given to the man by the foreman. He uses that number regardless of what change was made on the order that was issued for that number. That is, he keeps track of those changes under that order, and kept his time [1382—1294] under that number.

Q. You were familiar, were you, with the changes?

A. Well, in a general way, yes. In a general way at that time.

Q. I hand you a paper entitled "Specifications for repair to S. S. 'Hilonian,' " marked "Siversen Exhibit." What was the number that you gave for those specifications?

A. I have never seen the specifications before. I could not distinguish the specifications now from what was brought over there by the engineer or the representative of the ship. He brought a list of

(Testimony of Richard W. Curtis.)

work. I do not remember the details of that at the present time.

Q. When you say "I have never seen the specifications before," you refer to that particular paper?

A. That is what I mean. I cannot identify the form of it. That is what I mean. I know that he had a list, but to say that was the same form as this I could not do it. I do not remember it.

Q. Cannot you read that over and identify it as the original list of work that was to be done on the "Hilonian"?

A. No, sir, I could not do it at the present time because I will tell you, I do not pay such particular attention to a list of work as to memorize it and remember it this length of time, for the simple reason that I have so many, and have gone over so many bills up to the present time that I could not specialize that this was the list of repairs at the time that the work was done.

Q. Now, look at the first item of that specification. Don't you remember that that work was done on the "Hilonian"?

A. No, sir. I cannot remember what work was done on the [1383—1295] "Hilonian," or what work was not done on the "Hilonian" at the present time. The only thing I have got to go by is my heading on my bills that I knew I made up from the reports of the different foremen in the yard, and knew that work was done.

Q. Suppose you take that bill and see if you can-

(Testimony of Richard W. Curtis.)

not identify that first specification as work that was done.

A. I will tell you, I could not go through this list on this bill, on this list you have given me here and pick out what was done and what was not done in detail. I tell you I did not go into the manner or method that these things were done when the job was finished, and during the progress of the job. I knew certain changes were being made by consulting the foremen of the different departments, at the time it was fresh in my mind. I reread both the copy of the original list of work and the other details of work that had accumulated during the progress of the work and checked it over with the foreman. That is the extent that I went to.

Q. Has this matter lain dormant in your mind since 1909?

A. It has to the extent that I have never given it a single thought as to the details of the work, or the amount of the work of any specific part of the work. All I have paid attention to is the time at the time I made up the bill, and as to the headings from the different foremen's reports. As to the settlement of the different parts of the work or how it was done I have had nothing to do with that.

Q. You have had the entire charge and conduct of this case, have you not, for the United Engineering Works? A. I have in a general way, yes.

Q. And have been present at all the hearings?

A. Yes, sir. [1384—1296]

Q. Please look at the second item of specification,

(Testimony of Richard W. Curtis.)

on Siversen Exhibit "A" and tell me if you do not remember that that item was supplemented by the installation of a small balance cylinder instead of the work called for by item 2.

A. All I know about it is we made a balance cylinder and installed it on the "Hilonian." At the present time that is fresh in my mind, but what it took the place of or what was done I do not remember at this time—

Q. Don't you know—

Mr. FRANK.—Let him finish his answer.

A. Or what was done at this time to install that, I could not tell you.

Mr. McCLANAHAN.—Q. Don't you know that that balance cylinder job was never given a separate number?

A. I cannot recall that at the present time, just as I told you, for the simple reason we could not make those segregations. I took the whole thing collectively and made a bill out of it collectively.

Q. Where did you get a list to which you attached job number 5297, which is one of these consolidated job numbers embodied in Schedule 1?

A. I could not tell you that now. I do not remember. The only thing I do remember is, these numbers pertaining to the "Hilonian" job. To tell you definitely what started on each number outside 5295 I cannot tell you at present.

Q. Tell me what started definitely under 5295.

A. I could not tell you. I can only tell you 5295 started with the original list of work that the repre-

(Testimony of Richard W. Curtis.)

sentatives of the "Hilonian" presented at the yard.

Q. You then cannot tell me where you got the list of work to [1385—1297] which you attached either 5297, 5296, 5318, 5346, 5360, 5325, 5394, or 5398?

A. No, sir. I could not go into it in detail and tell you because I do not remember.

Q. Can you tell me what work generally was covered by 5360?

A. No, sir, I could not at the present time.

Q. Let me ask you to examine Putzar's time-sheets for 5360, and tell me what work was covered generally by that number.

A. (After examination.) On 5360 the sheets state that the men were working on the smokestack.

Q. On the smokestack?

A. Yes, sir, and placing letters on the smokestack.

Q. You refer to your sheet 42, do you not?

A. Yes, sir, smokestack.

Q. And to your sheet 48 "Letters on stack"?

A. Yes, sir.

Q. Those are the two sheets you refer to?

A. There is another sheet further on.

Q. There is? A. Yes, sir.

Q. Do you mean earlier or later? A. Later.

Q. And your sheet No. 72?

A. Yes, sir, that is right.

Q. So that No. 5360 was the smokestack job number, was it?

Mr. FRANK.—He did not say that.

A. No. 5360 shows that there was work done on

(Testimony of Richard W. Curtis.)

the smokestack.

Mr. McCLANAHAN.—Q. That must have been the smokestack's job number.

A. It was a smokestack job number. It was for other work on the smokestack. It covered a great deal of work that I can remember.

Q. Was there any work done on the smokestack except the work covered by Schedule 9 of the libel?

A. Let me see Schedule 9. (After examination.) In answer to that I will say this: that there was an agreed price for [1386—1298] certain work on the smokestack and there was also other work done on the smokestack. You can see that by the time-sheets. The extent of that work I do not remember at the present time, but I know the timekeeper in charge of the work knew what was being done on the smokestack, and he checked the time at that time.

Q. What was the other work done on the smokestack outside of the contract which is shown by Schedule 9?

A. That I cannot remember. I do not remember.

Q. Was it not placing letters on the smokestack?

A. If it states so on the time-sheets. It was also placing letters on the smokestack.

Q. Does that refresh your memory at all?

A. It refreshes my memory to the extent that I knew that she did not have letters on when she went over there. When she left the yard I knew she had letters, and I knew that they placed the letters on the smokestack.

Q. Also you knew that the letters were not put on

(Testimony of Richard W. Curtis.)

there under any contract? A. Evidently not.

Q. Do you know of any other work besides the letters not covered by Schedule 9, that was done on the smokestack?

A. I could not specify or generalize just what was done on that smokestack, outside of what was on the time-sheets. It shows work on the time-sheets. That was checked up at the time but I don't remember exactly what was done.

Q. Are you willing to testify, to your knowledge, that there was work done on the smokestack other than covered by Schedule 9 of the libel, and other than the letters which were placed there?

A. I am willing to say this: that there [1387—1299] was work performed on that smokestack other than the contract, for if there was not the time-keeper would not have allowed the time, and we would not have charged the time. The timekeeper knew what was being done under all numbers on the "Hilonian."

Q. That time No. 5360, appearing in Putzar's time-sheets, was charged against the respondent in this case, and embodied in Schedule 1, was it not?

A. Yes, sir.

Q. And you are also suing in this case for Schedule 9 of the libel, are you not? A. Yes, sir.

Q. Why was the smokestack work done on the "Hilonian" as shown by Putzar's time-sheets given job number 5360, and Schedule 9 of the libel, the contract for the stack work, given 5389?

A. The contract for the stack work was given 5389

(Testimony of Richard W. Curtis.)

because we did not want to charge you people with work you contracted for in your time and material work. It was given a separate number for that purpose.

Q. All of the smokestack work that was done on the ship, as shown by Putzar's time-sheets, bear the number 5360 and not 5389?

A. No, sir, because it was time and material work.

Q. What was time and material work?

A. 5360.

Q. Work on the smokestack?

A. Work on the smokestack, if it states "smoke-stack." On the sheets it was time and material, work performed on the smokestack.

Q. And you charged that to the Matson Navigation Company?

A. After being duly checked by the representative of the ship, and found to be right, I charged it to the Matson Navigation Company.

Q. Putzar's time-sheets would show all the work done on the [1388—1300] smokestack, would they not?

A. Not all the work done on the smokestack. As I stated before, the work that was agreed, and the agreed price given was put under 5389, and is not on Putzar's sheets.

Q. Then Mr. Putzar did not keep time on the "Hilsonian" of the work performed under Schedule 9 of the libel?

A. Mr. Putzar did not keep the time. Mr. Putzar knew the men that were working on the job. He got

(Testimony of Richard W. Curtis.)

the numbers for that work; he knew the extent of the work as any timekeeper would; he checked the men on the work, what the company agreed to do for an agreed price from which is extra, or any alterations.

Q. Then Mr. Putzar's time-book does not contain any labor performed on the "Hilonian" under Schedule 9? A. No, sir.

Q. You are sure of that?

A. Yes, sir, I am sure of that, because we checked it up at the time.

Q. And yet you do not know what labor was performed on the smokestack other than Schedule 9 and the letters? A. I do not know what labor?

Q. Yes.

A. The labor is stated on the sheets, but I do not know what the work was in detail. I do not remember at the present time.

Q. It would have been an easy matter, would it not, Mr. Curtis, to have given the work done in making the letters that went on the smokestack a separate number?

A. No, sir. As I told you before, the changes were becoming so great and extensive and so many of them, and some of them large and some of them small, that in order to simplify matters we did not put in any more numbers.

Q. That does not answer my question, Mr. Curtis. I want to know if it would not have been an easy matter to have given [1389—1301] the work of

(Testimony of Richard W. Curtis.)

making those letters that went on the stack a separate job number.

A. It would only make it more intricate to carry out in this way. You would have put every little change you would put in in a number and you would have more numbers than changes.

Q. I am not speaking of any change. I am speaking of putting on a job number for the letters on the smokestack. That would have been easy.

A. Yes, sir. But as I told you before, we did not want a whole lot of numbers. It leads to confusion.

Q. That could have been done, could it not?

A. It could have been done but it would lead to confusion.

Q. Could not the labor that was necessitated by making those letters and installing them on the smokestack been kept separate under a separate job number?

A. It could have been, but they are stated on the sheets.

Q. In fact, they were kept separate, were they not, the hours of labor performed on the letters for the smokestack?

A. That was a matter of segregation right at that time. I could not tell you now.

Q. Does not Mr. Putzar's time-sheets show that the labor was kept separate that was performed on the letters?

Mr. FRANK.—Mr. Putzar's time-sheets is not all the labor.

Mr. McCLANAHAN.—Q. With that qualification

(Testimony of Richard W. Curtis.)

will you answer the question?

A. It might be and it might not.

Q. Is it not a fact that Mr. Putzar's time-sheets also show that the boiler work performed on the ship was all done under one separate number, No. 5296?

A. No, sir, because just as I tell you, when we came to check up we found that certain details had been rearranged and rechanged, and we consolidated [1390—1302] the entire numbers collectively for that bill.

Q. So you deny that Mr. Putzar kept track of the boiler work on the ship under 5296?

A. I do not deny that Mr. Putzar kept track of the boiler work under 5296.

Q. Do you admit it?

A. I admit 5296 is on the steamer, but to go into details now and tell you exactly what was done in each particular, I cannot do it.

Q. Don't you know that Mr. Putzar kept track of the work performed on the tank and bulkhead under 5297?

A. I could not tell you that at the present time. I know he kept track of that work.

Q. Don't you know that Mr. Putzar kept track of the work performed on the gear-casings, stanchions and railings under 5318?

A. Mr. Putzar kept track of the time on the gear-casings, stanchions and railings.

Q. Under 5318?

A. Possibly under 5318. If it is on the sheet he did.

(Testimony of Richard W. Curtis.)

Q. Do you know if he found any difficulty in doing so?

A. I did not consult with him in regard to that.

Q. Mr. Curtis, when were these ship time-cards destroyed?

A. I do not remember that. I cannot recall that.

Q. How long do you keep the cards ordinarily?

A. We keep the cards 60 or 90 days.

Q. Do you keep them until you find out whether there is going to be a complaint or misunderstanding about the bill? A. Yes, sir, as a general rule.

Q. As soon as you presented this bill to the Matson Navigation Company, you knew that there was going to be a dispute over it, did you not?

A. No, sir, not for some time after.

Q. How long after?

A. I cannot recall that. [1391—1303]

Q. It was not paid at once and it has not been paid yet? A. No, sir.

Q. Did you destroy these cards yourself?

A. I ordered them destroyed; that is all. It is a standing order.

Q. Answer the question. Did you destroy them yourself? A. Destroy them myself?

Q. Yes.

A. I saw them destroyed when I went through the place, and they accumulated there. I ordered them destroyed.

Q. Did you destroy them yourself? A. No, sir.

Q. Who did?

A. We have various people cleaning out the place,

(Testimony of Richard W. Curtis.)

whoever it might be.

Q. Who destroyed the "Hilonian" cards?

A. I could not say at the present time.

Q. Who generally does that work?

A. We have handymen that clean out these cards, that clean out whatever we want cleaned out of the office. There is no specific man that that duty is imposed on.

Q. Who was the handyman at the time these cards were destroyed? A. That I do not remember.

Q. What do you mean by "handyman"?

A. I mean by handyman, a helper out in the yard that might not be doing anything, and he is told to come in the office and do so and so, or do whatever is required.

Q. I believe you said you saw these cards destroyed?

A. I did not say I saw the cards destroyed. I ordered all the cards at that time destroyed.

Q. How do you know that they were destroyed?

A. They generally burn them up in the boiler. As a general rule—I am not stating any specific cards—I know that [1392—1304] is the practice. We burn them up in the boiler, as a general rule.

Q. Have you any explanation to make that will account for the fact that the entries in Mr. Putzar's time-sheets covering September 11th are made after the entries covering September 14th?

A. No, sir, I could not tell you that at the present time.

(Testimony of Richard W. Curtis.)

Q. You recognize that is a fact, though, do you not?

A. I think it was that way. I do not remember.

Q. Have you any explanation to make of why the entries in Putzar's time-sheet covering the night of September 15th were made and entered after the night of September 16th?

A. I could not tell you. I do not remember. I do not know any of those details.

Q. You recognize that that is a fact, do you?

A. I only have the loose sheet.

Q. You recognize that the entry of September 15th was made after the night of September 16th?

A. I do not know.

Mr. FRANK.—What evidence have you of that? I should like to see the sheet myself.

Mr. McCLANAHAN.—Q. Look at the sheets. Let us take up the first one now that there is a controversy over the matter. Turn to September 11th. Now, with reference to September 11th, your sheet 63, you recognize that that sheet was made and entered by Mr. Putzar after sheet 62, which was the night of September 14th, do you not?

A. I do not remember that at all. Just as I say, I only got the loose sheets. I have been over these and checked them and re-sorted them.

Q. You kept them in the order in which they were given to you?

A. No, sir, I would not say that. [1393—1305]

Q. Why did you number, then, this sheet of September 11th, 63, after you had numbered the sheet

(Testimony of Richard W. Curtis.)

of September 14th, 62?

A. I have been through these sheets twice and each time I have numbered them in a different way. I started from the bottom up. If you will turn on the other side you will notice my numbers here, No. 82 and No. 19.

Q. Do you want to say now that your numbering there in the circles is incorrect?

A. I will not say that. It is just the numbering, as far as the numbering is concerned. I do not say that I picked them out and put them in a specific order but I have been through them and checked them and rechecked them.

Mr. FRANK.—Q. When did you put those numbers in the circles?

A. I put those numbers in the circles a couple of days ago when I was making a rechecking. I was at that time rechecking from their time-book making a comparison.

Mr. McCLANAHAN.—Q. Now, Mr. Curtis, you do not now remember anything about Mr. Putzar's turning in a sheet of September 11th after he had turned in the sheet of September 14th?

A. No, sir, I do not remember that detail.

Q. You do not remember now Mr. Putzar turning in the sheet of the night of September 15th after he had turned in the sheet of September 16th?

A. No, sir.

Q. You do not? A. No, sir.

Mr. McCLANAHAN.—Well, for the purpose of making perfectly clear this situation that the sheet

(Testimony of Richard W. Curtis.)

of September 11th, marked "Curtis Exhibit No. 3," sheet 63, follows the sheets of Mr. Putzar of September 14th, and for the purpose of making clear that Mr. Putzar's sheet of the night of September 15th follows the sheet of the night of September 16th, we offer in evidence the original [1394—1306] time-book kept by Mr. Putzar and by Mr. Curtis.

Mr. FRANK.—I object to that means of identification. What you are offering in evidence is the time-book passed in by Mr. Putzar to you, from which the sheets passed in to Mr. Curtis or the United Engineering Works were taken out.

Mr. McCLANAHAN.—We will not split hairs over that.

Mr. FRANK.—Let me see. Let me look at them. I do not see that it is material or makes any difference. At the same time I want to know what there is in this.

Mr. McCLANAHAN.—I ask that it be marked Respondent Curtis Exhibit No. 4.

(The time-sheet book is marked "Respondent Curtis Exhibit No. 4.")

Q. I understand, Mr. Curtis, that Mr. Putzar in your presence placed his signature on the sheets composing your exhibit No. 3, at the time you handed them over to him. Is that correct?

Mr. FRANK.—He did not say that.

A. I did not say that.

Mr. McCLANAHAN.—Mr. Frank, let the witness say he did not say it. The evidence clearly shows he did say it.

(Testimony of Richard W. Curtis.)

Mr. FRANK.—He did not, and I have a right to object to an assumption contained in the evidence, which is contrary to the evidence.

A. What I did say was that Mr. Putzar affixed his signature to the sheets I wrote out in my handwriting acting as his clerk in my presence.

Q. That is what I meant.

A. But they are not all in my handwriting.

Q. I stand corrected. I meant the sheets dated from September 17th to September 24th inclusive.

A. Yes, sir, that is right. [1395—1307]

Q. Now, in your direct examination you made the statement that the time-cards were duly checked up by the foreman of the different departments. Do you remember that statement?

A. Yes, sir, that is right.

Q. What did you mean by the foreman checking up the time-cards?

A. The foreman checked up the time-cards with their lists of work.

Q. How do you know that?

A. Well, it is their duty to do so, and I know at times that when I dropped into the office in the morning that some of them were checking the time-cards.

Q. And you assumed that that duty was performed?

A. Well, that is an imperative rule over there, to do that.

Q. Is it not also a rule that they should sign the time-cards as correct when they have checked them up? A. No, sir.

(Testimony of Richard W. Curtis.)

Q. Why have you got printed on there a place for the foremen's signature?

A. That is an old form. We have never changed that form.

Q. Was it ever the rule and duty?

A. Very few foremen have ever signed the cards after they checked them up. Some of them do and some of them do not. We do not insist on it.

Q. The cards were printed for that purpose?

A. The cards are of the same form since 1898 or 1899, as I can remember.

Q. And were printed for the purpose of having the foremen sign their name to them?

A. It is a copy taken from the Standard time-cards.

Q. You do not know if they were printed for the purpose of [1396—1308] having the foreman sign them?

A. We never went out and insisted that the foremen should sign each time-card.

Q. After the foremen had checked up the cards I understand that you went out and checked them up?

A. They were turned into the office and I went through them.

Q. And you checked them up? A. Yes, sir.

Q. And you have already explained what you meant by checking them up?

A. I went through them and checked them up.

Q. You have already explained what you meant by checking them up?

A. I checked them up with the sheets.

(Testimony of Richard W. Curtis.)

Q. In making out Schedule 1, did you have any guide in your commencement of the enumeration of the work performed as shown on page 1 of the schedule? A. Yes, sir, I did have a guide.

Q. What was it?

A. The different lists of work from the different foremen of the different departments in the yard.

Q. And you used that guide in making out the schedule?

A. After being checked up with the foremen reading it through and rereading it, that was consolidated into this bill.

Q. So that the list of work forms your guide in making the enumeration which commences with page 1 of Schedule 1? A. Page what?

Q. Page 1 of Schedule 1.

A. Yes, sir, the list of work.

Q. And nothing else?

A. These lists and nothing else. [1397—1309]

Q. Mr. Curtis, the stock cards that have been introduced in evidence in this case were introduced for the purpose of showing the material furnished to the "Hilonian," were they not? A. Yes.

Mr. FRANK.—I guess I am the judge of what they were introduced for. The record shows what they were introduced for.

Mr. McCLANAHAN.—It seems the witness also knows, Mr. Frank.

Mr. FRANK.—That may be his idea.

Mr. McCLANAHAN.—Q. Did you ever give the same work two numbers?

(Testimony of Richard W. Curtis.)

A. What do you mean by the same work?

Q. Don't you know what I mean?

A. I do not; no.

Q. Well, *suppose were* making a list for the smokestack, would you give that particular job two numbers?

A. No, not as a general rule, no; but it might have been in some cases where we started out to make repairs, and then we started to use all the job numbers collectively, one part pertaining to one part might be charged under one number and one another, but the serial numbers were known to belong to that ship.

Q. On the same day did you ever give two numbers to the same piece of work?

A. The personal equations of the workmen; when they are checked up, though, it is known that the numbers belong to that ship, and if the numbers are used collectively, why it is charged to that ship—investigated at that time.

Q. You remember Mr. Chandler testified here recently when he was recalled?

A. Mr. Chandler, yes.

Q. Can you explain why his numbers are different on his time-cards for crank-pin brasses?

A. I cannot at present, no; I can't recall.

Q. Do you remember his testifying as to the number of pounds of [1398—1310] challenge metal that went into the "Hilonian" job? A. Yes.

Q. He said over a ton and a quarter, didn't he?

A. Yes.

Q. Why did you only bill 608 pounds?

(Testimony of Richard W. Curtis.)

A. Certain changes were made in that time, and certain work had been started on 5395, and then an agreement had been entered into as to a price for that work, and that metal and material and time was withdrawn at the time the work was progressing, after it became known that there was a figure agreed for that work; and whatever material was used in the work that was agreed upon was cut out; whether Mr. Chandler used it or anybody else used it, it was withdrawn.

Q. That is, there was a figure agreed upon for the challenge metal to be used on job 5295?

A. On part of it.

Q. And you were enabled to deduct from the total amount of challenge metal used on the whole job the amount of challenge metal for which there was no agreement?

A. Yes, because we did it at the time it was being done, the work was being done and the pieces were in the shop.

Q. And that extra challenge metal was 608 pounds?

A. That was charged to the "Hilonian."

Q. And the balance of the challenge metal came under an agreement? A. An agreement, yes.

Q. That called for no charge?

A. That called for what?

Q. For no charge, no specific charge?

A. Called for agreed prices for that part or piece.

Q. What was the agreement calling for an agreed price on the remaining portion of the challenge metal?

(Testimony of Richard W. Curtis.)

A. I don't remember that in detail, now, but you have charges there for different babbitting work, machine work on different pieces.

Q. Please examine the libel and see if you can tell me where the [1399—1311] balance of that one and a quarter tons of challenge metal is to be found in any contract. A. Schedule No. 4.

Q. Schedule No. 4. Any other schedule?

A. No; that is all.

Q. So that you think that the balance of the metal to make up the ton and a quarter over the 608 pounds charged extra was used in Schedule No. 4 under special contract? A. No.

Q. It was used in part? A. In part, yes.

Q. And where was the balance used?

A. Well, for four main bearing-boxes, I believe there was different remetalling on different parts of the ship; I can't recall the incident now or the particular part or piece.

Q. And where were they charged? Where was the metal charged for the four main bearing-boxes?

A. I can't recall now.

Q. You have your bill there; please look at your bill and tell me where that is charged. Please bear in mind, Mr. Curtiss, that I am speaking now of the surplus remaining of the ton and a quarter after you have deducted the 608 pounds and the amount of challenge metal necessary to do the work covered by Schedule 4.

A. Well, I can't recall that at the present time because I don't know definitely, only that on Sched-

(Testimony of Richard W. Curtis.)

ule No. 8 5009 there are four bearing-boxes, and possibly they were babbitted, I don't know; I don't remember.

Q. If they were, would Schedule 8 and Schedule 4 make up the balance of the ton and a quarter?

A. I would not say as to the ton and a quarter. I know there was babbitt used on the schedules; I won't say as to the ton and a quarter.

Q. Was there any babbitt—

A. I don't place that estimate of a ton and a quarter.

Q. Was there any babbitt used except on Schedule 4 and Schedule 8 and 608 pounds? [1400—1312]

A. I would not say about that, I don't remember. I have not got it placed distinctly in my mind.

Q. You have not charged for it, have you?

A. No. I have only charged you for 608 pounds, as you have on the bill.

Q. Mr. Curtis, the "Hilonian" was painted when she was over there, was she not? A. Yes.

Q. Why didn't you charge for painting?

A. There is a charge for painting.

Q. Where is that?

A. Schedule 1; cleaning and painting 2 coats, \$240.

Q. You are referring now to the last page of Schedule 1, are you not? A. Yes.

Q. Do you know that that only covers the labor on the painting?

A. That is all it covers, the labor.

Q. Why was not the paint charged?

A. The paint was bought direct; we do not supply paint.

(Testimony of Richard W. Curtis.)

Q. Buy direct of whom?

A. By the owners of the vessel, presumably the paint came to the yard. I suppose that the owners of the vessel bought the paint; we do not sell paint; we keep paint in stock in small quantities, but we do not handle it.

Q. So if a man wanted his vessel painted you couldn't do it and furnish the paint?

A. We would go to the parties who own the paint and arrange with them as to what paint he would use and we would supply that paint; we have nothing to do with furnishing that paint or the make of the paint.

Q. Will you please answer—if I want my ship painted you could not supply the paint?

A. I could supply the paint from the storeroom; each paint shop has a storeroom.

Q. So that it is a matter of agreement, is it not, whether you [1401—1313] supply paint or whether the owners of the ship supply the paint.

A. We do not supply paint. We make it a rule not to supply paint, that is, we supply, in a word—if you want to limit the word “supply” inasmuch as we have the paint on hand—that is, we don't charge for the paint; we don't handle the supplying or the cost price or anything of that paint, that is, being reimbursed for the paint itself.

Q. Do you mean to say that you never paint ships, supplying the paint yourself?

A. We have not for some time.

Q. Since when?

(Testimony of Richard W. Curtis.)

A. Oh, I can't give you a definite set time, but I do not think we have for the last four years.

Mr. FRANK.—What is the materiality of this? Are you trying to kill time or are you trying to make a record? You are not charged for any paint. What is the difference, then, with what we do with other people; what complaint have you got when you have not been charged for paint in this case?

Mr. McCLANAHAN.—Q. Without answering counsel so that the witness may have the benefit of the answer, I show counsel a certain paper.

Mr. FRANK.—Well, how does that make it material? You are not charged for the paint, are you?

Mr. McCLANAHAN.— I do not care to have any discussion.

Mr. FRANK.—I object to it.

Mr. McCLANAHAN.—Put in your objection.

Mr. FRANK.—I note my objection and insist upon it, and I insist that this record be not filled up with immaterial matter. There is a certain paper shown me, let the record show, that is Respondent Siver-
sen's Exhibit "A," subdivision 15. There is no materiality to it, and in order to put an end to this kind of [1402—1314] difficulty and taking time and piling up the record, I instruct the witness not to answer unless the Court orders that he shall answer.

Mr. McCLANAHAN.—What is the question, Mr. Reporter?

(The last question repeated by the Reporter.)

Q. Mr. Curtis, isn't it a matter, always a matter of contract and agreement between the parties as

(Testimony of Richard W. Curtis.)

to whether the owner of the ship furnished the paint or you furnish the paint?

A. When we have been giving a figure on painting a vessel it has always been understood that we were only to supply the labor; we have never furnished the paint.

Q. So that it is a matter of contract and agreement between the parties.

Mr. FRANK.—Now, if you are going much further with this, I will have to insist upon my objection. If there is any way you can explain to me how that thing can be material, even if you whisper it in my ear, so that the witness cannot hear.

Mr. McCLANAHAN.—Q. Answer the question, Mr. Curtis.

(The last question repeated by the Reporter.)

A. I do not make the contracts. I don't know. I only know that I have never charged the paint to any vessel for a number of years.

Q. You are quite sure of that, are you?

A. I am—to the best of my knowledge, I am.

Q. Yet you keep paint in your shop, do you not?

A. Just as a matter of accommodation, that is all.

Q. You did keep it there at the time the "Hilonian" was being repaired?

A. Yes, we kept paint there.

Q. It is perfectly clear, is it not, Mr. Curtis, that the labor and material furnished to the "Hilonian" under Schedule No. 1 or embodied in that schedule was at the time of its being furnished [1403—1315]

(Testimony of Richard W. Curtis.)

coupled with the job numbers which you say you have consolidated?

A. Yes; the job numbers were given to the ship at the time.

Q. When did you last see Mr. Putzar?

A. I have not seen Mr. Putzar for some time. I can't recall the exact time I saw Mr. Putzar.

Q. When did you last communicate with him?

A. I don't know as I ever communicated with him.

Q. What is that?

A. I don't know as I ever communicated with him. I don't remember.

Q. When did the United Engineering Works last communicate with him?

A. Well, I could not tell you; that is not in my line at all. I don't know.

Q. You know he has been communicated with, don't you? A. I don't know.

Q. Do you know where he is?

A. No, I do not personally.

Q. Personally you do not?

A. No, I do not, personally.

Q. Have you heard where he is?

A. No, I have not heard where he is.

Q. You have not seen him in a year?

A. Well, I would not say that; I possibly have seen him, you know.

Q. Haven't you talked to him within the last few weeks? A. No, I have not.

Q. What is that?

A. I don't remember of talking to him within the

(Testimony of Richard W. Curtis.)

last few weeks, no.

Q. Have you seen him within the last few weeks?

A. Well, I did not pay any particular attention; I might have seen him on the street, if he is in town—a marine engineer around the waterfront, probably I did pass him. I did not pay any particular attention to him; not interested in the man so far personally.

Q. Wasn't he offered employment by the United Engineering Works [1404—1316] after this "Hilonian" job?

A. I don't know anything about that; that is not in my line at all.

Mr. FRANK.—Call Mr. Eva and ask him.

Mr. McCLANAHAN.—I would rather call Mr. Gray.

Mr. FRANK.—You know where Mr. Putzar is; what is the use of your talking like that?

Mr. McCLANAHAN.—Perhaps you do.

Mr. FRANK.—Yes, I think I do.

Mr. McCLANAHAN.—Perhaps you talked with him.

Mr. FRANK.—Whether I did or did not, it is immaterial.

Mr. McCLANAHAN.—If you have, you have me at a disadvantage. I never have, though I have tried to.

Mr. FRANK.—I do not think you would have any difficulty if you wanted to.

Mr. McCLANAHAN.—Perhaps not now.

Q. I understand, Mr. Curtis, that none of the

(Testimony of Richard W. Curtis.)

work performed under special contracts appears in Schedule 1.

A. No. We checked it each day to the best of our ability, and on both sides we kept a perfect check on it, and there was every effort to keep it straight.

Q. So that if there is such work, it is an inadvertence?

A. Well, I don't know how that could be, because checking it over, when the work is fresh in the men's mind, and anything that would come up that there was any doubt about would certainly be eliminated at the time.

Q. The men did not have anything to do with preparing Schedule 1, Mr. Curtis?

A. You are getting back to what I mean in preparing Schedule 1—you mean preparing Schedule 1?

Q. I mean this, that if there is any work appearing in Schedule 1 [1405—1317] that should belong to and does pertain to special contracts, it appears there through an inadvertence and a mistake.

A. Well, now, I will tell you. You come back to the way the Schedule 1 was made up from reports and the different foremen, from the checking of the stock order cards, and the checking of the time-cards of the men that did the work every day, and I do not see, with the matter fresh in the minds of the men, where there could be anything belonging to special contracts charged in Schedule 1.

Q. I will reform my question. If there is any work set forth in the enumeration of work found on the first, second and third pages of schedule 1, that

(Testimony of Richard W. Curtis.)

is work belonging to special contracts, it is in there through inadvertence?

Mr. FRANK.—Mr. McClanahan, if there is anything there that does not belong there, you point it out to us and show us that we are wrong, and it certainly will be eliminated now just the same as it would be at the beginning when we offered to check up the work with you. We are entitled to know, if you have any criticism, the exact nature of the criticism, and this hidden and dark way of getting at it is not proper and it is not fair. We contend that there is nothing in there of that nature, but if there is anything and you think there is anything in there, and will point it out to us and point it out here on the examination, we would be very free to admit it if we found it to be incorrect.

Mr. McCLANAHAN.—Q. Answer the question, Mr. Curtis.

A. At the time that I made up schedule 1 that was from the personal equation from the foreman that worked on the job, through rereading and recorrecting his list at the time, when the work was fresh in the minds, at the time, and that is what I accepted.

[1406—1318]

Q. That does not answer my question.

A. Well, to go through that now—

Q. I am not asking you to go through it.

Mr. FRANK.—Q. What he wants to know is whether you intentionally put anything in there that should not be in there, that was contract work?

A. Intentionally put anything in there?

(Testimony of Richard W. Curtis.)

Q. Yes.

Mr. McCLANAHAN.—That was not my question.

Mr. FRANK.—What is it?

Mr. McCLANAHAN.—The record shows.

Mr. FRANK.—Read it. You said “through inadvertence.” What is the difference between inadvertence and doing it intentionally?

(The last question repeated by the Reporter.)

A. What do you mean by “inadvertence”?

Mr. McCLANAHAN.—Q. Through mistake.

A. We took great care in making up this schedule and great caution to prevent any such thing.

Q. That does not answer my question.

Mr. FRANK.—You have admitted these schedules, Mr. McClanahan, in your answer.

Mr. McCLANAHAN.—Q. That does not answer my question.

A. I can't answer it any other way. I don't understand it.

Q. If such work appears in those three pages it appears through a mistake; it is there through a mistake, you understand that? That is my question.

A. Only, I think I can say that the thing was checked up and made up and at the time it was correct.

Q. In other words, you swear now that there is no mistake in that schedule on those three pages?

A. To the best of my ability, in checking up over there—that is, we contend it was correct. [1407—1319]

Q. Who is “we”?

(Testimony of Richard W. Curtis.)

A. I mean by that the different foremen of the different departments.

Q. Did they help you make up that bill?

A. They did not help to make up the bill, only to the extent of each man bringing in his list and reading it back.

Q. You have said that you had those lists in your possession already? A. So I did.

Q. Then what were they bringing in theirs for?

A. Well, they are reports too.

Q. What reports?

A. They bring in their reports—the final orders are in my possession, the list of work, and when I made up this bill, why, I called the foremen in and read over their writing or their list of work that they made up.

Q. That they make up independent of your list of work that you furnished them?

A. I always have a copy of them, but I do that to refresh myself.

Q. Answer my question; the reports that they made up independently of the lists which you furnish them?

A. They keep track of the ships on their list.

Q. Answer my question; is that a report that is independent and separate from the lists which you furnish them?

A. No, it is not independent and separate. The list is still the original list, but they add to it certain changes, etc.

Q. They add to the original list the changes?

(Testimony of Richard W. Curtis.)

A. And make certain marks as to what has been changed, whatever information that is required.

Q. You are speaking of reports; you mean written reports? A. I mean written reports.

Q. Where are those written reports?

A. I told you yesterday, [1408—1320] I believe, that these reports were destroyed, we did not need them.

Q. Now, are you confounding reports with the lists which you furnished?

A. Well, I mean the lists and the reports are the same; I am using the same term to apply to both of them; that is what I mean.

Q. Well, then, the list which you furnished to the foremen at the inception of the work, when the work is finished is changed sometimes?

A. Oh, yes, it is changed, certain changes on it; and then there is comments on it; the foreman makes comments.

Q. And it is from those changed lists that you made up that schedule 1?

A. I took up the schedules and reports and put them together, had the foremen come and we consulted regarding it, and then I made up schedule 1.

Q. From those changed lists?

A. From the lists, yes.

Q. And those lists have been destroyed?

A. Yes.

Q. Did you destroy them? A. I did, yes.

Q. Immediately upon making out the bill?

A. A short time after I made out the bill I de-

(Testimony of Richard W. Curtis.)

stroyed them, yes.

Q. And with them you destroyed your list that you kept in the office? A. I did, yes.

Q. Do you destroy contracts in the same way?

A. What do you mean by destroy contracts?

Q. Where the work is done under a contract do you destroy the contracts after the work is done?

A. Why, we have kept no specific account of contracts in late years owing to the sliding condition of labor and the changes that are constantly going on; we have never stopped to figure them out.

Mr. FRANK.—You are talking about two different things. [1409—1321]

Mr. McCLANAHAN.—Q. I am speaking of your destroying the written evidence of the contracts covering work to be performed by your people?

A. The written evidence, you mean?

Q. Yes. A. Written evidence, a letter or an agreement?

Q. The specifications. A. Why, no.

Q. You do not destroy those?

A. No, not until they become of a certain age, of no value to us.

Q. If there had been a contract in this case for the original work that contract would not have been destroyed or the written evidence of it would not have been destroyed, would it? A. No.

Q. Your contention is that there was no contract?

A. I do not know anything of the contract. Just as I told you, I do not enter into contracts; I do not handle them.

(Testimony of Richard W. Curtis.)

Q. The work to be performed, whether it is contract or time and material work, is treated the same?

A. Treated the same; just a list is given.

Q. If you have introduced in this case any time-cards covering, clearly covering, contract work, that is an inadvertence, is it? A. The time-cards?

Mr. FRANK.—What is the use of that? We can't understand that. I think the law will presume that it is an inadvertence unless you prove that we attempt to commit a fraud on you. The object of **that** kind of examination I can't understand. If you were in court you would not be permitted to do this thing for a minute.

Mr. McCLANAHAN.—Q. Answer the question, Mr. Curtis; Mr. Frank is through with his discussion.

A. Well, there are a good many cards introduced, you know, have contract or special agreed price numbers on, as well the numbers that pertain to these different exhibits, exhibit 1, but are not counted because they both appear [1410—1322] on the same cards, we could not very well eliminate one and not put the card in evidence.

Q. Yes, but where the card contains a single number, "Hilonian" number, that is a number which you have given to schedule 1, and the work shows itself to be contract work, why was that card introduced in evidence?

A. That card is correct, inasmuch as we checked it every day at the time and we knew what the man was working on.

(Testimony of Richard W. Curtis.)

Q. It is correct irrespective of what it shows on its face?

A. You can't always read the face of these cards and tell exactly what has been done, not at present. If you were right on the job and knew what the man was working on and knew what he meant by his inscription or found out what he meant, then you would know whether it was right or wrong. That is the reason we check them every day.

Q. Well, now, a good many cards, Mr. Curtis, bear on their face the words "main bearings," showing the time performed on main bearings; that work comes under schedule 8, which is a special contract, is it not?

A. No, not if it was checked up at the time, that it was on the other number, why it was correct at the time.

Q. So that you think there was work done on the main bearings that come under schedule 1?

A. I can't detail or specify what it was, but I know at the time it was checked up that these things were looked into, and they were satisfactory at the time, and it was correct; to go into the detail of two years ago, why, I don't remember clearly enough for that.

Q. You yourself are relying largely on the fact that the cards at the time were checked up and found to be correct?

A. Why, yes, the cards were checked up, and we seen the work going along; that is the method we

(Testimony of Richard W. Curtis.)

have of determining those things are [1411—1323] correct.

Q. You rely on them irrespective of the fact that there may be something on the face of the cards that shows it to be a wrong charge?

A. Well, I am trying to tell you that the mere wording on the card does not at all times tell you in detail what has been done.

Q. Do you know now whether there was any work done on the brake rig on the reversing shaft except work covered by schedule 7 of the libel?

A. I don't remember.

Q. All work done in making and installing the brake rig on the reversing shaft would properly be charged to No. 5401, would it not?

A. Yes, it would be properly charged until we changed it.

Q. And if it was charged to 5295 it was put in schedule 1? A. Yes.

Q. That is, if the card showing the work done on the brake rig bore the number 5295 it was charged in schedule 1? A. Yes.

Q. And if the card or cards bearing the number 5295 for work on the main bearings, that work was charged to 5295? A. Yes.

Q. Will you please look at schedule 3 of the libel.

A. Yes.

Q. Explain why, Mr. Curtis, there is a duplicate charge there.

Mr. FRANK.—What do you call a duplicate charge? Point it out.

(Testimony of Richard W. Curtis.)

Mr. McCLANAHAN.—The second sheet is a duplicate charge of the first.

Mr. FRANK.—That has already been explained.

Mr. McCLANAHAN.—It has been explained by your saying it has been withdrawn.

Mr. FRANK.—And has been explained otherwise.

A. I went into that in detail.

Mr. McCLANAHAN.—Q. Well, do it again, please. You are under [1412—1324] cross-examination now.

A. Schedule 3, page 2, calls for making up a certain amount of work that was performed on the other side of the bay at the Alameda shop on job number 5528. Then it was sent over to the San Francisco shop.

Q. What was sent over?

A. This material that was made under the schedule. Finished and installed on job number 1818, schedule No. 3, page No. 1, with other additional work, and that both, that is schedule No. 3, page No. 2 and the articles that comprise this additional work that was installed on 1818 were combined into schedule No. 3.

Q. Why was it that you duplicated the charges in the libel?

A. Just as I said, this charge of \$226.35, schedule 3, page 2, was canceled on our books.

Q. But you are suing for it in this libel.

Mr. FRANK.—We are not doing anything of the sort; the mistake of counsel in the case is not chargeable to this witness, and it is withdrawn, and you

(Testimony of Richard W. Curtis.)

were told so.

Mr. McCLANAHAN.—Q. You heard Mr. Frank's statement; is it his mistake that this duplication of schedule 3 appears in the libel? A. Yes.

Q. I will ask you to look at the first page of schedule 3, where you have charged \$12 for pattern work, and I ask you why it is that you charged \$12 on that schedule and \$11.10 on the second page—which is correct?

A. The schedule No. 3, page No. 1, is the correct charge for the work that is called for on that schedule.

Q. You made up both, did you? A. I did, sir.

Q. And that is your explanation?

A. That is my explanation.

Q. You say that the original lists of work that came into the shop was given job number 5295?

A. Yes. [1413—1325]

Q. You also know, do you know, that a balance cylinder was installed on that ship? A. Yes.

Q. Do you know, Mr. Curtis, that that balance cylinder work was given on the time-cards job number 5295?

A. If it is on the time-cards, I believe it was; yes.

Q. Do you know whether that balance cylinder work appeared on the original specifications or not?

A. I don't remember now.

Mr. FRANK.—I guess that is five times you have asked that question.

Mr. McCLANAHAN.—You must be very nervous, Mr. Frank.

(Testimony of Richard W. Curtis.)

Mr. FRANK.—Not at all. It is simply a question of time.

Mr. McCLANAHAN.—I have not the overweaning ability to get at things in a minute that you have.

Mr. FRANK.—It is a protest against an abuse of the opportunities given by this mode of taking testimony.

Mr. McCLANAHAN.—Q. Now, Mr. Curtis, you have referred in your direct examination to the payment of schedules 4 and schedules 9 of the libel and a return to the Matson Navigation Company of the check covering those two schedules or bills, and I remember that you said that the check covered other items or other matters. Why was that check returned?

A. Well, what I remember regarding the check is that the check included those schedules and an item for eleven thousand and some odd dollars that was inserted on the check. I took that to my people and they told me at the time to return it.

Q. The check was for the amount of schedules 4 and 9, as shown by your exhibits 1 and 2, and in addition was for \$11,749, was it not?

A. I don't know how many schedules it covered at present, but I know that there was an item of \$11,000 on it also. [1414—1326]

Q. You know that it covered schedules 4 and 9, do you not?

A. Yes, it must have covered 4 and 9, because I receipted it.

(Testimony of Richard W. Curtis.)

Q. You so testified? A. Yes.

Q. And you don't remember the exact figure in excess of those?

A. No. I only know that there is an item of \$11,000 on that.

Q. Who did you present the check to when you went back to your office?

A. I presented the check to Mr. Eva.

Q. You had examined the check before you presented it, had you not?

A. Yes, I had examined it.

Q. What paper did you give to the Matson Navigation Company as a voucher for the \$11,000 payment?

A. Well, I did not sign any paper for the \$11,000 voucher, because it was in the form of a voucher check that they used.

Q. What was on the voucher check?

A. Well, just the \$11,000.

Q. For what? Payment for what?

A. I didn't go into the thing in detail as to all the exact items. I know I went up there to collect the account and they gave me this check.

Q. Do you mean to say—

Mr. FRANK.—You have the actual check; why don't you produce it?

Mr. McCLANAHAN.—Q. Do you mean to say, Mr. Curtis, that you do not know what the \$11,000 in excess over the payment of schedules 4 and 9 was for?

A. They stated it was for an agreement, yes.

Q. An agreement for the work on the "Hilonian"?

(Testimony of Richard W. Curtis.)

A. That is what they stated.

Q. And you went back with that check to Mr. Eva and reported—

A. I told them at the time that I did not know of any such agreement, that I would take the check, and if it was all right, all right; it was not up to me to decide that matter.

Q. You went back to Mr. Eva with this check and reported to them [1415—1327] what they had said, did you? A. Yes.

Q. That this was a payment on the agreed price for the work on the “Hilonian”?

A. I told them that they had tendered this check to me and that there was an item of \$11,000 there that I did not know anything about.

Q. Well, did you explain to them, your people, what the Matson people had told you it was for?

A. I don't remember the exact words, whether I went into that detail or not. I know that I did not handle that end and I passed that out of my mind. I did not pay any particular attention to that. It is up to Mr. Eva to check that, I do not.

Q. Was Mr. Eva the only one that you saw about the matter?

A. Well, I handed the check over to him; that was all I had to do with the matter.

Q. How long did he keep the check?

A. Well, I don't remember how long he kept it.

Q. You took the check back, did you?

A. I took the check back.

Q. The same day?

(Testimony of Richard W. Curtis.)

A. The same day, yes—I believe the same day.

Q. How long a time had elapsed since the rendition of the bill to the Matson Navigation Company when you received this check?

A. I don't remember now.

Q. Had any time elapsed—had you rendered the bill?

A. Yes; considerable time had elapsed.

Q. When was this check handed to you?

A. The date I receipted that bill, November 24.

Q. November 24. A. 1909.

Q. So that on that date the Matson Navigation Company were claiming that there was a contract for the "Hilonian" work amounting to over \$11,000.

A. I didn't go into a controversy as to a contract [1416—1328] or anything else. I told them at the time I did not know anything about that, and I would take that check to my people.

Q. What did you go down there to collect, Mr. Curtis?

A. I went down to collect the entire account.

Q. That is that you are suing for now?

A. I don't remember the exact figures of it. I know I went down there simply to try and collect it; as a general rule, the Matson Navigation Company at certain periods made payments, and I just happened to be passing by and I dropped in to see if I could get some money from them.

Q. To collect the whole amount that you are suing for?

A. I don't know as I specified the whole amount.

(Testimony of Richard W. Curtis.)

I don't know as I presented any exact figures.

Q. Was that the first time that you knew that the Matson Navigation Company claimed that there was a contract for this work?

A. That was the first time that I was familiar with the matter; yes.

Q. Who did you see when you went back with this check?

A. I turned it over to Mr. Eva.

Q. When you went back to the Matson Navigation Company who did you see then?

A. Mr. Gregg, I believe.

Q. What did you tell Mr. Gregg?

A. I told Mr. Gregg that the check was not satisfactory to the United Engineering Works.

Q. Did you know why it was not?

A. No, I didn't know anything as to why it was or why it was not.

Q. Did Mr. Eva tell you why it was not satisfactory?

A. I can't recall the conversation, whether he told me or not. You see I have nothing to do with that end of the business, and I don't make any inquiries regarding it. I have got nothing to do with that.

Q. So that you have now no recollection of the conversation you had with Mr. Gregg when you went back with the check? [1417—1329]

A. Only I told him it was not satisfactory.

Q. So you remember that part of the conversation?

A. I remember that part of the conversation.

Q. And you can't remember anything else?

(Testimony of Richard W. Curtis.)

A. No. I don't know as I had any conversation regarding it, outside of that, only to turn the check over and bring it back.

Q. You knew at that time that there was a dispute, did you not?

A. Well, as soon as I brought the check back I evidently knew there was something the matter, that they did not accept the check.

Q. After that did you destroy any of the cards pertaining to the ship work on the "Hilonian"?

A. Well, I don't remember.

Q. Have you brought with you, Mr. Curtis, the data which I asked for, the time cards which are rejected by Mr. Frank, the circulating pump contract, the Howden forced draft contract, and the donkey boiler contract?

A. I have not had an opportunity to hunt them up as yet.

Mr. McCLANAHAN.—Well, I will have to defer my further cross-examination until you do.

Mr. FRANK.—Well, you needn't trouble yourself about that for we decline to produce them on the ground it is immaterial. I will have to find out what my rights are in this matter in respect to that. I have my objection at the time you asked for them.

Mr. McCLANAHAN.—I understand you, now, that you decline to produce them?

Mr. FRANK.—Yes, certainly, on the ground they are utterly immaterial, not charged for in here and no connection with the case whatsoever.

Mr. McCLANAHAN.—You decline to produce the

(Testimony of Richard W. Curtis.)

time-cards which your witness has testified to?
[1418—1330]

Mr. FRANK.—Which I rejected; yes.

Mr. McCLANAHAN.—And you decline to produce the evidence of the circulating contract?

Mr. FRANK.—I don't know anything about the circulating contract.

Mr. McCLANAHAN.—Then you do not decline to produce it.

Mr. FRANK.—Wait a minute. I will inquire into that. I do not know what the situation is about that.

Mr. McCLANAHAN.—Do you decline to produce the Howden force draft contract?

Mr. FRANK.—I will inquire into that too. I will give you an answer to that later.

Mr. McCLANAHAN.—Do you decline to produce the donkey boiler contract?

Mr. FRANK.—I will inquire into that.

Mr. McCLANAHAN.—Now, Mr. Frank, I will have to ask for an adjournment of the hearing until Friday morning.

Mr. FRANK.—Why do you want an adjournment?

Mr. McCLANAHAN.—I have to go out of the city on a matter of business that has come up unexpectedly.

Mr. FRANK.—Well, of course, it is understood it won't affect our time.

(An adjournment was here taken until Friday, October 27th, 1911, at 10 A. M.) [1419—1331]

(Testimony of Richard W. Curtis.)

Friday, October 27th, 1911.

RICHARD W. CURTIS, cross-examination resumed:

Mr. McCLANAHAN.—Mr. Frank, have you considered the matter of the production of the circulating-pump contract, the Howden force draft contract and the boiler contract?

Mr. FRANK.—Q. Yes. You have the original of those in your own possession.

Mr. McCLANAHAN.—Of each of them?

Mr. FRANK.—Of each of them.

Mr. McCLANAHAN.—I was not aware of that, I produce, Mr. Frank, a letter of August 26th, 1909, addressed to the Matson Navigation Company and signed by the United Engineering Works per H. P. Gray, together with a carbon copy of a letter dated August 28th, addressed to the United Engineering Works without any signature to it, and ask you if that is the Howden force draught contract.

Mr. FRANK.—What do I know about it?

Mr. McCLANAHAN.—You seemed to know a great deal about it. You told me I had them in my possession.

Mr. FRANK.—You have them. I am not the witness identifying the papers.

Mr. McCLANAHAN.—If you cannot identify it, let me see if the witness can.

Q. Mr. Curtis, I hand you the two letters and ask you if you can identify the contract (handing)?

A. I identify this as a letter written by Mr. Gray, setting forth certain work to be performed on the

(Testimony of Richard W. Curtis.)

Howden draught system for the sum of \$725.

Q. Who is Mr. Gray?

A. Mr. Gray is the secretary of our company.

[1420—1332]

Q. He had power and authority to write that letter, did he?

Mr. FRANK.—It is immaterial.

A. I do not know as to the authority conferred on him. I had nothing to do with the contracts at all. I could not tell you that.

Mr. McCLANAHAN.—Q. Did you ever bill that to the Matson Navigation Company?

A. Yes, sir; I billed that to the Matson Navigation Company.

Q. You billed that contract set forth in that letter?

A. Presumably, yes; the contract set forth in that letter. I know there was a description given to me of the work to be performed on the Howden force draught, and the sum of money set out there that was agreed upon.

Mr. McCLANAHAN.—We offer the two letters in evidence and ask that they be marked Curtis Exhibit No. 5.

Mr. FRANK.—We object to them as incompetent and immaterial. There is no dispute about the contract price or anything connected with the Howden force contract. It is specially admitted by the respondent as being correct, being incorporated in Exhibit No. 10.

(The letters are marked "Curtis Exhibit No. 5," and are as follows:)

[Curtis Exhibit No. 5.]

“UNITED ENGINEERING WORKS,
San Francisco, Cal., August 26, 1909.

Matson Navigation Co.

Gentlemen:

Attention of Captain Sanders.

We propose to remove the after side of both uptakes where wasted and put in entirely new plates of #8 steel. Remove present lower tube in Howden force draught system and replace with new. Remove air baffles in hot air space and [1421—1333] replace with new and put everything back in place to satisfaction of owners representative, all for the sum of Seven Hundred Twenty-five (\$725.00) Dollars.

Respectfully Submitted,

UNITED ENGINEERING WORKS.

per H. P. GRAY.”

“Aug. 28—1909.

United Engineering Works,
City.

Gentlemen:—

Your letter of August 26th offering to make certain repairs to the Hilonian for the sum of \$725, is hereby accepted.

Yours truly,”

Mr. McCLANAHAN.—Q. Mr. Curtis, I hand you what purports to be a carbon copy of a letter dated “San Francisco, Cal., January 18th, 1909,” addressed to the Matson Navigation Company, signed “United Engineering Works, per H. P. Gray, Sec-

(Testimony of Richard W. Curtis.)

retary," and ask you if the circulating-pump contract referred to in the first paragraph of that letter was ever billed by you to the Matson Navigation Company (handing).

Mr. FRANK.—We object to this and call on you to produce the original. It only purports to be a bid, and has not got the acceptance attached to it.

Mr. McCLANAHAN.—I will say in reply to that, I have made search for the original of this, and this paper submitted to the witness is the only thing that I can find, therefore I call [1422—1334] upon the witness to produce his carbon copy of that letter.

Mr. FRANK.—Your making search for it is not conclusive. It does not appear that the company, or secretary of the company, or the regular custodian of the company, has made any search for it, or are unable to find it.

Mr. McCLANAHAN.—Q. Mr. Curtis, please answer the question, if you can, from an examination of that paper.

Mr. FRANK.—We object to it. Of course, the original would be in your possession and not in our's.

A. I cannot recognize this paper. If it were on our own letter-head that is about the only way I could make a strict identification of this thing or any ear-marks on it.

Mr. McCLANAHAN.—Q. I am not asking you to do that. I want you to say whether from an examination of this your memory is refreshed as to whether you billed that circulating-pump contract to the Matson Navigation Company.

(Testimony of Richard W. Curtis.)

A. Yes, sir, I billed a circulating-pump contract to the Matson Navigation Company.

Q. And in what amount? A. \$1,350.

Q. And it was billed subsequent to the "Hilonian" leaving the shop of your company?

A. Yes, sir, I believe it was, to the best of my knowledge.

Q. On the occasion in dispute?

A. What do you mean by "occasion in dispute"?

Q. I mean it was billed subsequent to the vessel leaving your shops on the occasion in dispute?

A. Yes, sir.

Mr. McCLANAHAN.—Now, Mr. Frank, I do not find any record of the donkey-boiler contract among my papers. Have you got it? Can you save time by producing it, if you admit there was such a contract? [1423—1335]

Mr. FRANK.—Have you not got the original?

Mr. McCLANAHAN.—I have not.

Mr. FRANK.—Why not?

Mr. McCLANAHAN.—I do not know.

Mr. FRANK.—What has become of it?

Mr. McCLANAHAN.—I have not been able to find it. I suppose we can prove that we have made search for it. I have asked for it on several occasions. If you have got it it will save time. I will call for it on the production of my witnesses showing that they have made search for it. There cannot be but one set of papers covering that contract, and we have not got them.

Mr. FRANK.—I do not see it is material, but I am

(Testimony of Richard W. Curtis.)

not disposed to make any unnecessary difficulty by an immaterial thing. There it is (hanging).

Mr. McCLANAHAN.—We offer in evidence the contract produced by Mr. Frank, being copy of a letter dated November 14th, 1908, addressed to the Matson Navigation Company and signed by the United Engineering Works, to which is attached a paper entitled “Specifications for renewal of tubes in donkey-boiler of the S. S. ‘Hilonian,’ ” and also a letter of November 14th, 1908, addressed to the United Engineering Works and signed “Matson Navigation Company, W. H. Sellander,” and ask that it be marked Curtis Exhibit No. 6.

Mr. FRANK.—Objected to upon the ground that it is irrelevant and immaterial.

(The papers are marked "Curtis Exhibit No. 6" and are as follows:) [1424—1336]

[Curtis Exhibit No. 6.]

"Nov. 14, 1908.

Matson Navigation Co.,
268 Market St., City.

Gentlemen:—

We propose to renew tubes in the Donkey Boiler on the SS. 'Hilonian' as per specifications submitted for the sum of Two hundred and fifty-nine Dollars (\$259.00).

Respectfully submitted,
UNITED ENGINEERING WORKS.

By _____, Sect'y."

SPECIFICATIONS

for

Renewal of Tubes in Donkey Boiler of the
S/S 'Hilonian.'

64 plain tubes 3-1/4" dia. #10. gauge

20 stay tubes 3-1/2" " #6 "

Tube sheets and connections to be thoroughly sealed and coated with white zinc and coal oil before the new tubes are put in. All material and work to comply with the requirements of the U. S. Inspectors and to be satisfactory to the owners or their representative.

MATSON NAVIGATION COMPANY,

268 Market Street,

San Francisco, Cal., November 14, 1908.

United Eng. Wks.,

254-256 Spear St., City.

Dear Sirs:—

We hereby award you the contract for the renewing of the [1425—1337] tubes in the donkey boilers on the S. S. 'Hilonian,' as per bid for \$259, submitted November 14th.

Yours very truly,

MATSON NAVIGATION COMPANY,

W. H. SELLANDER."

Mr. McCLANAHAN.—Mr. Frank, cannot you do the same favor for me on the circulating-pump contract?

Mr. FRANK.—I am willing to do favors for you if you can show me any reason wherein it is material. I do not want to give you all my records just as a

(Testimony of Richard W. Curtis.)

matter of curiosity, or for some hidden purpose that I do not know about. Naturally, I would not give you things that I do not know the purpose of.

Mr. McCLANAHAN.—Mr. Frank, of course I am not asking you for your records, but I am asking you for records that are yours and mine. I am simply stating that I have been unable to find my end of it. The purpose of the request is this; we shall contend that in the bill sued for in this suit there is work included covered by these respective contracts.

Mr. FRANK.—Then you should point out the work that is included. We have a right to have that pointed out so as to give us an opportunity for explanation.

Mr. McCLANAHAN.—That is outside of the present matter.

Mr. FRANK.—Until you have pointed it out, I do not see how it becomes material and therefore I am not prepared to produce anything.

Mr. McCLANAHAN.—Very well, I will have to call for it at a later time.

Q. Mr. Curtis, am I to understand that if there had been a contract for the original, or covering the original list of [1426—1338] work which was turned in to the United Engineering Works, that it would have been treated in the office differently than the list of work which was turned in was treated?

A. No, sir. It would have been treated the same. That is, I mean the same in this matter, that if it were a contract turned in to me in the office I would know that a certain amount of work was

(Testimony of Richard W. Curtis.)

agreed upon for a certain set sum; and if there was a ship at the yard, and the captain or engineer, who might be in charge, would have a list of work to perform, I would treat it in the same manner and give it a number, if that is what you mean.

Q. No. I mean in the handling of the written evidence of the contract in the office files and records, the contract would have been treated differently from the specifications without contracts.

A. No, sir; in the office files everything that comes in is stamped with a rubber stamp and referred, and filed according to the numerical order.

Q. If there had been a contract there would have been no destruction of the original specifications covering that contract, as you have specified there was a destruction of the original list of work?

A. There was a destruction of the original list of work.

Q. If there had been a contract there would not have been any such destruction.

Mr. FRANK.—I object to that mode of attempting to prove that there was a contract. If there was a contract in this case, you have in your possession the contract, both the letter which you have produced and the acceptance if there was any acceptance. There is no such paper offered, and the conclusion [1427—1339] of the witness or the manner in which he handles it would not tend to prove what is a contract or what is not a contract. You are perfectly familiar with all the terms of your agreement with respect to that original list, and have all the papers material in

(Testimony of Richard W. Curtis.)

your possession. They are the best evidence and should be produced if there are any. Any other I object to as immaterial.

Mr. McCLANAHAN.—Q. Mr. Curtis, answer the question.

A. If there were any contract or agreed price that comes into the office the description embodied in the letter of course would be preserved.

Q. Or if there were specifications connected with the letter which constituted the contract or the letters which constituted the contract would be preserved, would they not?

A. The complete records would be preserved, yes.

Q. But in the present case of the "Hilonian" there was no such record for preservation?

A. Not that I know of. I do not know of the contract. I did not pay any special attention to it. It was never called to my attention.

Q. That is just the point. If you had known of the contract there would be a preservation of the evidence of that contract in the files of your office?

A. As a general rule, they would preserve whatever papers they received.

Q. Mr. Curtis, you have had a good deal of experience in the past 12 years with timekeepers?

A. Yes, sir; I have kept time myself.

Q. I mean timekeepers that have been employed by ship owners? A. Yes, sir.

Q. A great deal of experience, have you not?

A. Yes, sir.

Q. Do they pursue a fixed routine or method of

(Testimony of Richard W. Curtis.)

keeping time as a rule? [1428—1340]

A. As a general rule, there is a man's personal methods of work in different cases.

Q. As a rule, there is a general method of keeping time? A. A general method.

Q. And you are familiar with that general method, are you?

A. Yes, sir; I am familiar with that general method.

Q. What is the purpose of a ship owner—what purpose is to be accomplished by a ship owner keeping time on the work being done at your shop?

A. I have never gone to the ship owner and asked him for what purpose he puts the timekeeper on a job. Only I know this; the purpose, so far as I am concerned, is that we should check up the time and the material when it goes into that job.

Q. The object of the timekeeper, as far as you know, then, is to keep an accurate count of the time and the material that goes into the job?

A. Yes, sir. That is, we both meet and agree as to the time that is on the ship by checking back and forth. That is the custom.

Q. And the ultimate object is to determine the actual time and material put into the ship?

Mr. FRANK.—We object to what the ultimate object of anybody is in such a proceeding. The witness has testified as to the customary method of keeping time. You had a timekeeper on her—

Mr. McCLANAHAN.—Now, Mr. Frank, please do not discuss the matter. Put in your objection, and

(Testimony of Richard W. Curtis.)

leave it there.

Mr. FRANK.—Mr. McClanahan, I will make my objection in my own form. Every time I make an objection you want to tell me how to make it, and you want to run this whole case from beginning to end. You do what you want to do in your own way, [1429—1341] and when I do anything you want me to do it in your own way, too, which is impossible.

Mr. McCLANAHAN.—I am suggesting that you are only incumbering the record.

Mr. FRANK.—That is your idea; you are encumbering the record from A to Z with a lot of immaterial cross-examination. Let us not have any discussion about it and allow me to conduct my case in my own way and you can conduct your case in your own way.

Mr. McCLANAHAN.—The Court will determine that.

Q. Answer the question, Mr. Curtis.

Mr. FRANK.—Let me get in my objection first.

Mr. McCLANAHAN.—You mean your discussion, Mr. Frank.

Mr. FRANK.—Whatever you have a mind to call it.

Mr. McCLANAHAN.—All right.

Mr. FRANK.—I should like to know how the Court is going to pass on the objection if I do not give a reason for it. Now, Mr. Reporter, read my objection as far as I got. (The Reporter reads the objection)—and you are bound by the agreements of your timekeeper unless you can show that there was

(Testimony of Richard W. Curtis.)

fraud on our part.

Mr. McCLANAHAN.—Q. Answer the question, Mr. Curtis.

A. The object is to keep track of the time that is put into the ship. Some timekeepers keep track of material and some do not. In most cases, they just keep track of the time on a ship. The ultimate object is whatever he keeps track of it for the owners.

Q. What is the value, Mr. Curtis, of a timekeeper who keeps only the time on the ship, when there is shop time as well? [1430—1342]

Mr. FRANK.—I object to that also. I do not see what we have got to do with that. If your timekeeper has not kept shop time it is no fault of ours.

A. I have never stopped to place a value on timekeepers who do not keep time on the shop. I know very few keep the shop time.

Mr. McCLANAHAN.—Q. Very few keep the shop time? A. Yes, sir.

Q. Then what is the value of a timekeeper on the job?

A. I am not the man to instruct the timekeeper what he should do and what he should not do. That is the duty of the owner of the property who the work is being performed for.

Q. So long as you, representing the work, can have an understanding with the timekeeper who only keeps time on the ship, you are satisfied, are you?

A. That is the general custom. We never have insisted on the man keeping the time in the shop. That is up to the man himself.

(Testimony of Richard W. Curtis.)

Q. That time is as important in ascertaining the amount of labor put on the work itself as the ship time. is it not?

A. That may be; that is up to the judgment of the man who is keeping the time on the other side.

Q. It is up to the judgment of the shipowner?

A. Of the shipowner, yes.

Q. It is your opinion, is it not, that where a shipowner only has a timekeeper on the ship itself, that is an ineffective method of knowing the time put on the job.

Mr. FRANK.—I object to this. His opinion, and your arguments to the witness of this proposition, is entirely improper. You can argue what you please to the Court, whether effective or ineffective. Whether it was effective or ineffective [1431—1343] is up to you. He is your servant and not ours. We are not directing him what to do and what not to do, and cannot be held responsible.

Mr. McCLANAHAN.—Q. Answer the question.

A. In my experience a timekeeper, whether he keeps the time only on the ship or in the shop, as a general rule goes through the shop, and a man that is experienced and knows the parts and has a good idea of the work, can very readily judge, or nearly judge, as to the time.

Q. That is, the time put on the entire job?

A. Yes, sir.

Q. Both in ship and shop?

A. Yes, sir, both in ship and shop.

Q. Do you know whether Mr. Putzar performed

(Testimony of Richard W. Curtis.)

his duties on the line suggested in your last answer?

Mr. FRANK.—We object to that also as immaterial. He is not a judge of what Mr. Putzar's duties were. If Mr. Putzar was not keeping time according to your ideas you should have put on another timekeeper.

A. I do not know because I did not follow Mr. Putzar around.

Mr. McCLANAHAN.—That is the end of my cross-examination.

Mr. FRANK.—Now, Mr. McClanahan, before we begin in redirect examination, you have made certain suggestions in your cross-examination of certain time-cards, or stock cards, bearing numbers which you claim should not be charged in the bill, without specifying what the cards were. I demand, now, that you specify the particular cards to which you object, in order that we may be able to examine them and explain them, if they need any explanation whatsoever. You have not specified any of them.

Mr. McCLANAHAN.—I decline to furnish to the libelant any fruits of my efforts in examining and segregating the evidence [1432—1344] produced by the libelant in this case.

Mr. FRANK.—Do you claim that there are cards of the nature which has been covertly suggested in your cross-examination?

Mr. McCLANAHAN.—I do.

Mr. FRANK.—Then we demand a specification of them in all fairness, that we may be able to examine

(Testimony of Richard W. Curtis.)

them and explain them, if they are open to explanation.

Mr. McCLANAHAN.—The compliance which you request, if I felt so disposed to comply with it, would entail much labor and I do not care to comply with it.

Mr. FRANK.—Very well. Then we will adjourn and refer that to the Court, and see whether you can make those covert charges without giving us an opportunity of meeting them.

Mr. McCLANAHAN.—Mr. Frank, this adjournment of the Court is a very serious business with me. Time is the essence of my present engagements.

Mr. FRANK.—So it is of mine. I believe I have as many engagements as you have, but I think we are entitled to fair play in this case.

Mr. McCLANAHAN.—You are getting fair play in this case.

Mr. FRANK.—No, we are not.

Mr. McCLANAHAN.—You should know your case, and the exhibits and the evidence you have introduced better than I should. You should know what I know and perhaps more than what I know. If I am to examine your case for you so as to enable you to whip it into shape I had better send in for a retainer to the United Engineering Works.

Mr. FRANK.—What we should know and what we do know is one thing. We cannot know what you claim, and most undoubtedly [1433—1345] wrongly claim to be an incorporation into the bill of charges shown by cards that should not be charged

(Testimony of Richard W. Curtis.)

in there. We have a perfect right to be apprised of it as we have of anything else, so that we may fairly meet it in this case, and not be delegated to an unnecessary controversy hereafter. You should put your case in fairly.

Mr. McCLANAHAN.—All of the proof of your case has been presented by you. You should know what it is. You should know that there is not, or that there is, such evidence as I have suggested. If you claim there is not, it is a matter of issue between us to be threshed out on the argument of the case.

Mr. FRANK.—If you claim there is, it is up to you to point it out.

Mr. McCLANAHAN.—I will do so on the argument of the case.

Mr. FRANK.—No. It is up to you to point it out now. Your claim may be ill-founded and be open to explanation by the testimony which would be beyond the reach of counsel on the argument.

Mr. McCLANAHAN.—We need not discuss it. I decline to do it.

Mr. FRANK.—Very well. We will see what the Court has to say about it. If it says you do not have to do it we will go on.

Mr. McCLANAHAN.—Why cannot you go on with Mr. Curtis now and get rid of him except on that point?

Mr. FRANK.—That point is very material at the present time. I see very little in your cross-examination outside of that that would require me to examine Mr. Curtis on.

(Testimony of Richard W. Curtis.)

Mr. McCLANAHAN.—Well, then, just say that you have no redirect [1434—1346] except on that point and let us proceed.

Mr. FRANK.—Are you running me again, Mr. McClanahan?

Mr. McCLANAHAN.—I am making suggestions; yes.

Redirect Examination.

Mr. FRANK.—Q. Mr. Curtis, in the course of your examination there were certain numbers upon Mr. Putzar's time-sheets that you put on yourself and which you said were put there in an attempt to make a segregation of the charges. I will ask you whether or not those numbers were arbitrary numbers, or whether they were identified in any way with the job numbers upon this job?

A. The numbers that I placed on the sheet were not identified in any way with the job. It was just done merely to put numerals on the sheets for segregation, at the time that the segregation was asked for.

Q. Were they arbitrary?

A. What do you mean by "arbitrary"?

Q. I mean were they intended to identify the particular labor opposite which they stood as belonging to the particular job number?

A. No, sir, they were not; not for that purpose.

Q. I understood you to say upon your original examination that all of the time-sheets of Mr. Putzar, except those from September 17th to September 27th, are in Mr. Putzar's own handwriting?

(Testimony of Richard W. Curtis.)

A. Yes, sir.

Q. You said that you had seen Mr. Putzar years ago on the Oceanic Dock. What relation did he sustain to the Oceanic people?

A. Well, at that time when I referred to Mr. Putzar, he was Superintending Engineer of the dock.

Q. For the Oceanic Steamship Company?

A. For the Oceanic Steamship Company.

Mr. FRANK.—Now, Mr. McClanahan, I think we had better [1435—1347] refer this matter to the Court. I presume 2 o'clock would be a convenient time for you to get the attention of the Court.

Mr. McCLANAHAN.—Why cannot we go right up now?

Mr. FRANK.—In the first place, I do not think we could get the attention of the Court now; in the next place, I want to get the particular part of the record to refer to the Court, written up, so that we may not waste its time, and present it intelligently.

Mr. McCLANAHAN.—Suppose on investigation, Mr. Frank, we find that the Court is not available either to-day or to-morrow. I object to this case being halted on this ground. I am willing to have you conserve all your rights, but let us make progress. If this is your last witness, I am prepared to go on this afternoon at 2 o'clock with my case and we ought to do it. We have consumed a great deal of time in the case and to consume more unnecessary time it seems to me is uncalled for.

Mr. FRANK.—How can it be unnecessary? You

(Testimony of Richard W. Curtis.)

specify your cards and that is the end of the controversy.

Mr. McCLANAHAN.—I decline to do that. I am willing to have you conserve your rights and take this matter up before the Court at some convenient time, and in case you are sustained in your contention, to continue your redirect examination with Mr. Curtis. But my point is do not let us delay the progress of the case.

Mr. FRANK.—Very well.

Mr. McCLANAHAN.—Subject to your right to do that, and subject to your right of further redirect examination of Mr. Curtis, let me begin to put in my case.

Mr. FRANK.—That satisfies me, and we will adjourn this matter of going before the Court to some other time. [1436—1348]

Mr. McCLANAHAN.—That is it exactly. If he is your last witness it is understood that you close your case with that exception.

Mr. FRANK.—Or anything that may transpire in reference to his examination that makes it necessary for me to go further.

Mr. McCLANAHAN.—On the point in controversy.

Mr. FRANK.—Anything that may arise on the further or cross or redirect examinations.

Mr. McCLANAHAN.—Yes. Subject to that you close.

Mr. FRANK.—Yes.

(Testimony of Richard W. Curtis.)

Mr. McCLANAHAN.—And we will go on at 2 o'clock at my office.

(A recess was here taken until 2 P. M.)

AFTERNOON SESSION.

(An adjournment was here taken at the request of the respondent until to-morrow, Saturday, October 28th, 1911, at 10 A. M.)

Saturday, October 28th, 1911.

(An adjournment was here taken at the request of the respondent until Monday, October 30th, 1911, at 10 A. M.) [1437—1349]

Monday, October 30th, 1911.

**[Testimony of Harry B. Gregg, for Respondent
(Recalled.)]**

HARRY B. GREGG, recalled for the respondent.

Mr. McCLANAHAN.—Q. You are secretary, I believe, of the Matson Navigation Company?

A. I am.

Q. Have you made search for a bid for a circulating pump to be made and installed on the "Hilonian" by the United Engineering Works?

A. I did.

Q. Made search in the files of the office?

A. Yes, sir.

Q. Could you find the original bid at all?

A. I was unable to find it.

Mr. McCLANAHAN.—I will ask you now, Mr. Frank, to produce your copy of the bid and all the other papers that evidence the contract.

(Testimony of Harry B. Gregg.)

Cross-examination.

Mr. FRANK.—Q. Mr. Gregg, how does it happen that you have not got it in the files?

A. I don't know.

Q. Don't you keep all your contracts?

A. They are supposed to be on the files unless it has been misplaced. I made a very thorough search for it, though, without being able to find it.

Q. Have you no index to your files?

A. Yes, sir; but it was not where it should have been.

Q. Did you find the acceptance, the copy of the acceptance? A. No, sir.

Q. Whose custody are those in?

A. They should be in mine.

Q. What do you mean by "should be in yours"?

A. Unless somebody has removed them. I cannot watch the files all day long to see that the letters are not taken out.

Q. Who else has access to them besides you?

[1438—1350]

A. Everyone in the office.

Q. Do they take them out without consulting you?

A. They probably would.

Q. Is that the general condition in your office?

A. It would be very natural that it could have been taken. One of the stenographers might have taken it out. They have a good many letters passing back and forth in the day, and I might have been absent at the time.

(Testimony of Harry B. Gregg.)

Q. Did you make any inquiry of the stenographers?

A. I have, and they don't remember it; they do not remember having taken it.

Q. Did you ever miss any of your other files in that way?

A. I don't remember just at the present time. I would not be a bit surprised, though.

Q. It is not a question of whether you are surprised or not. A. I don't remember.

Mr. FRANK.—That is all.

Mr. McCLANAHAN.—Will you produce the copy, Mr. Frank? It is in your possession. And the original of the acceptance, if any.

Mr. FRANK.—We do not consider it material.

Mr. McCLANAHAN.—What material? The request to have it produced?

Mr. FRANK.—The contract is immaterial. You are calling for the production of immaterial papers.

Mr. McCLANAHAN.—I stated in my last statement with reference to this contract that we intended to show that labor and material which was contracted to have been performed under the circulating pump contract has been charged against us in the present bill.

Mr. FRANK.—Will you point out the labor and material that you think has been charged there?
[1439—1351]

Mr. McCLANAHAN.—We are getting away from the matter. I want you to produce the original of the acceptance, and the copy of the bid.

(Testimony of Harry B. Gregg.)

Mr. FRANK.—We cannot have the original; it must be in your possession.

Mr. McCLANAHAN.—The original of your acceptance and the copy of the bid.

Mr. FRANK.—You have made your demand; go on.

Mr. McCLANAHAN.—I am waiting for the production.

Mr. FRANK.—I am not going to produce it under the circumstances.

[Testimony of William Matson, for Claimant.]

WILLIAM MATSON, called for the claimant, sworn.

Mr. McCLANAHAN.—Q. You are the president of the Matson Navigation Company?

A. Yes, sir.

Q. Are you also the managing director on this coast?

A. I don't know about on this coast, but I am of the Matson Navigation Company.

Q. And you are the chief executive officer of that company? A. Yes, sir.

Q. Do you know the libelant in this case, the United Engineering Works? A. Yes, sir.

Q. For how long a period of time have you known the libelant?

A. Well, I don't really recall; some 10 or 15 years. I don't remember exactly.

Q. What has been the nature of your dealings with the company?

A. We have had a good deal of dealings together.

(Testimony of William Matson.)

Q. Have you had dealings prior to the matter in controversy?

A. Yes, sir; I think for a good many years.

Q. Who are the officers of that company—do you know them? [1440—1352]

A. I know Christy and Gray. I have mostly done all the business with Mr. Gray.

Q. Do you know what position Mr. Gray holds?

A. He seems to be the man that always goes around and get the contracts. I don't know what position he holds with the company.

Q. Do you know Mr. Eva, the president of the company? A. I know him slightly, that is all.

Q. The Matson Navigation Company is the owner and was the owner of the steamship "Hilonian" in the months of August and September, 1909?

A. Yes, sir.

Q. Prior to the month of August, state whether or no the steamship "Hilonian" was in need of repairs in her engine-room equipment.

A. Yes, sir. We had specifications drawn up and had different people bid on it, to do some repairs.

Q. Who drew up those specifications?

A. Mr. Klitgaard. He was at the time chief engineer.

Q. Mr. Carl Klitgaard?

A. I think that is his name.

Q. I show you Siversen's Exhibit "A" and ask you if you can at all identify that paper in connection with the specifications drawn up by Mr. Klitgaard (pointing).

(Testimony of William Matson.)

A. It looks like the same paper.

Q. That is the matter of the paper, or the paper itself?

A. The paper itself and the matter on the paper.

Q. It looks like the original specifications as drawn up?

A. Yes, sir, as I said before. I have not seen it for so long now that it would be pretty hard to swear it is exactly the same paper, but the reading of it is the same.

Q. When these specifications were first prepared by your chief engineer, were they submitted to anyone for figures?

A. They were submitted to the Risdon, the Union and the United Engineering [1441—1353] Works for bids.

Q. By the Risdon you mean the Risdon Iron Works? A. Yes, sir.

Q. What do you mean by the Union?

A. Union Iron Works.

Q. Were bids made for the work called for, specifications submitted to the Matson Navigation Company? A. Yes, sir.

Q. By whom?

A. By the different people. Gray was for the United Engineering Works and I think—I don't remember the name—what is the fellow's name at the Risdon—Peterson—he was in there from the Risdon. And the Union Iron Works, I don't remember the man who was in there at that time when the bids were opened.

(Testimony of William Matson.)

Q. You are clear that the United Engineering Works, the Union Iron Works and the Risdon did submit bids under the specifications which had been submitted to them? A. Yes, sir.

Q. Do you remember when those bids were opened originally? A. Yes, sir.

Q. What day was it, let me ask you further?

A. The first bid, was it not in August?

A. No, July.

Mr. FRANK.—Q. What are you referring to now, Captain? A. I am referring to the first bid.

Q. The first paper?

Mr. McCLANAHAN.—Q. Do not put it back in your pocket, Captain. He is asking what you are referring to. A. I am referring to the date.

Mr. FRANK.—Q. What is that paper you are referring to, that you have just taken out, that you are looking for a date on?

A. That was the matter of the bid that I took from the books this morning; I will show it to you.

Q. You took it off your books this morning?

A. Yes, sir. [1442—1354]

Mr. McCLANAHAN.—Q. Were the bids opened on the day stated for opening the bids on the original specifications? A. Yes, sir.

Q. And if that date was July 27th, 1909, they were opened on that day? A. Yes, sir.

Q. Where were these bids opened?

A. In the Matson Navigation Company's office.

Q. Who was present when the bids were opened?

A. Mr. Gray and one from each of the others; one

(Testimony of William Matson.)

from the Union and one from the Risdon.

Q. That is, the Union had a representative.

A. Yes, sir.

Q. And the Risdon had a representative?

A. Yes, sir.

Q. And Mr. Gray represented the United Engineering Works? A. Yes, sir.

Q. Who else was present besides those three gentlemen?

A. I think Captain Saunders and myself.

Q. State whether or no the bids after being opened were accepted. Any of them.

Mr. FRANK.—Objected to as calling for a conclusion of law from the witness. Whether they were accepted or not, will be determined by the Court from exactly what was done and said on that occasion.

Mr. McCLANAHAN.—Q. Answer the question.

A. What question shall I answer?

Q. Whether any of the bids were accepted at that time. A. They were rejected by me.

Q. In what way?

A. Because I thought they were too high.

Q. In what way were they rejected, by word of mouth or in writing, or how?

A. By word of mouth.

Q. Did you at that time and after the verbal rejecting of these bids have a conversation with Mr. Gray? A. Yes, sir.

Q. What was the conversation?

A. He said that he wanted the job, and he thought that I ought to put a timekeeper on there and he

(Testimony of William Matson.)

[1443—1355] would guarantee to do it within the figures that the bid was. Still I felt that the bid was too high, and it could be done a little cheaper, so I called for a second bid.

Q. I am confining your statements to this conversation. You say he suggested that you put a time-keeper on the job? A. Yes, sir.

Q. Did he name any timekeeper?

A. No, sir. He suggested two or three men, I don't remember their names now.

Q. Who were those that he suggested?

A. Putzar was one, and there were two other fellows; I don't remember.

Q. He suggested three men?

A. Yes, sir. He said there were two or three men who were pretty good men around town. Then I asked him how would Mr. Putzar do. He said he would be very glad to work with him.

Q. Did he suggest Mr. Putzar or did you suggest him? A. I would not want to say that.

Q. Did you know Mr. Putzar at that time?

A. No, sir. I did not know him.

Q. You did not know Mr. Putzar? A. No, sir.

Q. Had you ever heard of him before that time?

A. No, sir.

Q. But you know that Mr. Putzar's name was mentioned in that conversation?

A. There were two or three, Mr. McClanahan, who were mentioned there. I do not remember exactly what the names were.

(Testimony of William Matson.)

Q. Of the two or three, was Mr. Putzar's name mentioned?

A. I would not want to say whether it was or not. I mentioned Mr. Putzar's name myself, and he said he would be a first-class man.

Q. If you had not seen or did not know Mr. Putzar's name at that time or Mr. Putzar at that time, do you know now how you happened [1444—1356] to mention his name?

A. I think I had spoken to the Oceanic Steamship Company, to Mr. Samuels, about him—no, that was not until afterwards. You had better strike that out. I don't remember that.

Q. Did you speak to Mr. Samuels of the Oceanic Steamship Company about Mr. Putzar?

A. I think I did afterwards.

Q. Afterwards? A. Yes, sir.

Q. After this meeting, you mean? A. Yes, sir.

Q. After this conversation with Mr. Gray on July 27th, what did you do with reference to these specifications? A. I advertised for another bid.

Q. Who did you ask for bids from?

A. The same people.

Q. Did you ask for bids from the United Engineering Works? A. Yes, sir.

Q. I show you, Captain Matson, Respondent's Exhibit Christy "A," and ask you if you can identify that letter. (Handing.) A. Yes, sir.

Q. What is it? A. That is one of the bids.

Mr. FRANK.—Let me see it.

(Testimony of William Matson.)

Mr. McCLANAHAN.—Q. What bid was it, Captain?

Mr. FRANK.—One moment, Mr. McClanahan. Don't work so fast.

Mr. McCLANAHAN.—It is an exhibit in this case.

Mr. FRANK.—I know, but I want to play with you in this game.

Mr. McCLANAHAN.—If you want to play, I am willing; go on.

Mr. FRANK.—It takes two nines to play a baseball game.

The WITNESS.—There are three nines there, Mr. Frank.

Mr. McCLANAHAN.—Q. Is that the original bid of the United Engineering Works? A. Yes, sir.

Q. That is the bid that you referred to as having been rejected? [1445—1357] A. Yes, sir.

Q. As a consequence of advertising for new bids, did you receive any bid from the United Engineering Works? A. Yes, sir, I did.

Q. I show you Respondent's Exhibit Christy "B," and ask you if you can identify that paper. (Handing.)

A. Yes, sir; that is the second bid.

Q. The second bid of whom?

A. The United Engineering Company.

Mr. FRANK.—Let me see it.

Mr. McCLANAHAN.—Q. At the time of the receipt of that bid, dated August 2d, by the Matson Navigation Company, do you know whether the steamship "Hilonian" was here at this port?

(Testimony of William Matson.)

A. I think—I am not sure now about that—yes, I think she was here. You know the first time we got the bid she had to make a trip and I am not positive where the ship was when the second bid was made. I think she was here.

Q. After receiving this bid of August 2d, did you have any conversation with any officer of the United Engineering Works with reference to it?

A. Well, I had several conversations with Mr. Gray.

Q. What was the first conversation with Mr. Gray, about the bid of August 2d?

A. Well, he wanted the job awful bad, because he said that he had several small contracts on the ship, and he wanted the ship over at the yard. I felt that the bids were still higher than they should be, and he suggested to me that we put a timekeeper on and he would guarantee that he would do the job within that figure, and if the crank-shaft did not have to come out there would be a reduction of a couple of thousand dollars.

Q. What was the result of the conversation?

A. I told him I would give him the job and accept his bid. [1446—1358]

Q. Where was this conversation held, this second one? A. In my office.

Q. Do you know how Mr. Gray got there, how he happened to be within your office?

A. I think I telephoned to him; I am not sure now.

Q. Do you remember about what you said to him when he first came into the office on that occasion?

(Testimony of William Matson.)

A. I told him I would accept his bid.

Q. What was the conversation that followed the statement of yours that you would accept his bid?

A. He said that he would be glad to take the job and do it within the limit of that amount of money.

Q. Did you at that time have any conversation about the crank-shaft? A. Yes, sir.

Q. What was that conversation?

A. That if it did not have to come out there would be a reduction of a couple of thousand dollars.

Q. This bid that you said you would accept, what was the bid? A. \$11,749.

Q. Was it or was it not this letter of August 2d? Is that the bid that you refer to (handing)?

A. Yes, sir.

Q. Now, Captain, with reference to this crank-shaft, had there been any discussion with Mr. Gray or any member of the United Engineering Works prior to this acceptance of the bid with reference to that crank-shaft?

A. Well, there had been some conversation in regard to whether it had to come out, or not. I don't remember exactly. Christy went out on the bay one day when the ship came in to look at it, and I think he thought it was all right.

Mr. FRANK.—Let me caution you, Captain, you are not testifying here as to what you think or what you did not see, or what [1447—1359] someone reported to you. You are testifying to the things that you know.

The WITNESS.—All right; I know that.

(Testimony of William Matson.)

Mr. FRANK.—When I say that you know, I mean conversations that you had or things that you saw.

Mr. McCLANAHAN.—Your remarks to the witness, Mr. Frank, are entirely uncalled for. When the witness is making hearsay statements you have the privilege of objecting to them. You are not here to instruct the witness as to what he shall do or shall not do, or what he shall say, or what he shall not say, or how he shall say it. Your only right is to object to the evidence of the witness as it is given. I object to your instructing my witness as to what he shall say or how he shall say it.

Mr. FRANK.—You have been making a great many protests about filling up the record. Let me suggest to you that the easiest way not to fill up the record is to caution your own witness not to testify to hearsay testimony which requires a great deal of questioning to straighten out.

Mr. McCLANAHAN.—I am glad that you recognize that it is my province and not yours.

Mr. FRANK.—I shall do as heretofore. I shall do what I think is right and proper, without receiving instructions from you on the subject.

Mr. McCLANAHAN.—Q. You knew the question of the removal of the crank-shaft as called for by the specifications was an undetermined one?

A. Yes, sir.

Q. Did Mr. Gray know at the time of your acceptance of the bid of August 2d? [1448—1360]

Mr. FRANK.—I object to that. That is asking for a conclusion again. If he had had any conversa-

(Testimony of William Matson.)

tion with Mr. Gray on the subject, he can relate the conversation. To testify that Mr. Gray knew one thing or another thing is not proper.

Mr. McCLANAHAN.—Q. Answer the question. Did Mr. Gray know that that question was an undetermined one at the time of your acceptance of the bid of August 2d?

A. I certainly do not see how you can expect me to remember away back on those things.

Q. You have stated that he said in this conversation that if the crank-shaft was not removed that there would be a reduction approximating \$2,000.

A. Yes, sir.

Q. With that statement in mind, can you answer my question as to whether he knew at that time?

A. He knew there had been a good deal of talk about this crank-shaft, and probably it would not have to come out, and he spoke to me about the same thing.

Q. In this conversation? A. Yes, sir.

Q. So he knew that it was a question that was undetermined, whether the crank-shaft would or would not come out? A. Yes, sir.

Q. Do you remember the date of the acceptance of this bid?

A. It was somewhere near about the 17th or 18th of August. I do not remember exactly.

Q. Subsequently, after this conversation, in which you accepted the bid of the United Engineering Works, state whether or not the "Hilonian" was turned over to the United Engineering Works.

(Testimony of William Matson.)

A. She was turned over to them shortly after the acceptance of the bid.

Q. For what purpose was she turned over?

A. To fulfill that specification.

Q. To fulfill the accepted bid? A. Yes, sir.

[1449—1361]

Q. According to the specification?

A. That is right.

Q. Between the date of the acceptance of the bid of August 2d and the turning over of the "Hilonian" to the United Engineering Works in furtherance of that acceptance, do you remember having any talk with Mr. Gray or any other official of the United Engineering Works with reference to the work?

A. I don't remember having any.

Q. Between those periods of time do you remember having any talk with Mr. Putzar?

A. He came up to the office once.

Q. You need not state the conversation, Captain. I want to know if you remember that you did talk with him.

A. I did talk to him, yes, but I do not remember the date.

Q. Was a timekeeper placed on the job?

A. He was to be the timekeeper.

Q. Was he engaged for that purpose?

A. For that purpose.

Q. What was his duty?

A. Only to keep time on the repairs of that ship.

Q. Did he have any other authority given to him by you? A. No, sir.

(Testimony of William Matson.)

Q. Was anyone else connected with the Matson Navigation Company clothed with power to give any authority over than yourself?

A. No, sir.

Q. Captain, were you in this jurisdiction during the time the "Hilonian" was being repaired?

A. Part of the time.

Q. When did you leave the jurisdiction?

A. I think about the 10th of September; I do not remember exactly the date; somewhere in the neighborhood of that.

Q. About the 10th of September, 1909?

A. Yes, sir.

Q. Do you remember when you returned?

A. Somewhere around about the 27th.

Q. Of September? A. Yes, sir. [1450—1362]

Q. 1909? A. Yes, sir. She was gone then.

Q. That is, the work had been completed then?

A. Yes, sir.

Q. Do you remember subsequently whether you left this jurisdiction? A. Afterwards?

Q. Yes.

A. No, sir, I don't remember. I went back east but I cannot recall the date.

Q. But you did go back east after the 27th of September? A. Yes, sir.

Q. Do you remember when you returned from the east on that occasion?

A. I think I returned somewhere about the 10th of December.

Q. Some time in December?

(Testimony of William Matson.)

A. Yes, sir; somewhere around the 10th or the middle of December; I do not remember exactly the date.

Q. So that somewhere between the dates of September 10th and 27th you were absent in the east?

A. Yes, sir.

Q. And shortly after the 27th of September you left again for the east?

A. Yes, sir; I do not recall exactly the date. I would have to go back to the book and hunt it up.

Q. And returned from that second trip sometime in the fore part of December? A. Yes, sir.

Q. When Mr. Putzar was employed did he have any authority given him by you to make any change in the specification work which had been let to the United Engineering Works under their bid of August 2d? A. None.

Q. Did Mr. Putzar have any authority to make contracts for the Matson Navigation Company?

A. Not any.

Q. During the period of the repair on the "Hilonian"? A. Not any.

Q. During your absence from this jurisdiction who was it that had charge of the work being done on the "Hilonian" as representing you?

A. The chief engineer was there and Captain Saunders. [1451—1363-4] They were supposed to look out for the company's interest.

Q. Who was the chief engineer?

A. Klitgaard.

Q. Did Mr. Klitgaard take the "Hilonian" out

(Testimony of William Matson.)

following the completion of these repairs?

A. Mr. Putzar did.

Q. As chief engineer? A. Yes, sir.

Q. When was Mr. Putzar definitely employed as chief engineer of the "Hilonian"?

A. After the ship was fixed up, I think; he had already gone before I got back.

Q. Did you ever employ—

Mr. FRANK.—I move that that be stricken out as hearsay on the part of the witness. He does not know anything about it, he was not here at the time.

Mr. McCLANAHAN.—Q. Did you employ Mr. Putzar as chief engineer?

A. I had spoken to him and had promised him a job before I left.

Q. Did you promise him the job? A. Yes, sir.

Q. When was that?

A. Well, I could not recall the date; it was when the ship was being repaired, before I went east. Mr. Klitgaard had sent in his resignation; he was to leave.

Q. Do you know who it was that actually employed Mr. Putzar?

A. I think Captain Saunders gave him the job.

Q. Did you prior to that authorize Captain Saunders to do that? A. I think so.

Q. And he was employed while you were away?

A. Yes, sir.

Q. During the progress of the work on the "Hilonian" did Mr. Putzar make any report as timekeeper?

A. No, sir.

Q. Did he make any report afterwards after the

(Testimony of William Matson.)

completion of the work?

A. I think he did some month or two afterwards. I insisted on getting a report and I think he sent one in.

Q. Before Mr. Putzar reported to you as timekeeper had you ever [1452—1365] had knowledge of the work of keeping time which he had performed on the job? A. No, sir.

Q. Was he engaged to keep time on the ship or on the whole job?

Mr. FRANK.—I object to your leading the witness, Mr. McClanahan. You have been doing it straight along and I have not objected to it.

Mr. McCLANAHAN.—Mr. Frank, Captain Matson is a witness that cannot be led improperly and you know it.

Mr. FRANK.—That has nothing to do with it at all. You have to adhere to the rules of law with Mr. Matson as you would with anyone else. Mr. Matson is just as human as you and I, and in saying that I cast no reflection on him.

Mr. McCLANAHAN.—Read the question, Mr. Reporter. (The Reporter reads the question.) I further remark that the question is not leading.

A. Shall I answer it?

Q. Yes. A. He was, for the whole job?

Q. Do you know whether he kept time on the whole job or not?

Mr. FRANK.—I do not see the materiality of this examination at all. We are not responsible for Mr. Matson's timekeeper; whether he reported to him or

(Testimony of William Matson.)

he did not report to him, or how he reported to him, is a matter entirely between himself and his time-keeper. It can in no wise affect our rights in the premises.

Mr. McCLANAHAN.—You seem to think, Mr. Frank, we are bound absolutely by Mr. Putzar's actions. Our contention is we are not bound absolutely by his actions.

Mr. FRANK.—You certainly are, as far as we are concerned.

Mr. McCLANAHAN.—Q. Read the question, Mr. Reporter. [1453—1366]

(The Reporter reads the last question.)

A. Shall I answer?

Q. Yes.

A. I don't know whether he did or not.

Q. Do you know, Captain Matson, whether it was known to Mr. Gray or any other officer of the United Engineering Works that Mr. Putzar had been appointed by you as timekeeper on the job?

A. Mr. Gray knew it, surely.

Q. How long after the completion of the work was it, if at all, that you saw this time-book which is marked "Respondent Curtis Exhibit No. 4"?

A. It was some long time afterwards; I do not remember how many months.

Q. It was a matter of months, was it?

A. Yes, sir.

Q. Had you after the completion of the job made inquiry for this? A. Yes, sir.

Q. Who from? A. From Putzar.

(Testimony of William Matson.)

Q. From Mr. Putzar? A. Yes, sir.

Q. And were you or were you not able to get it from Mr. Putzar?

A. I did not for a long time afterwards.

Q. Captain Matson, had Mr. Putzar any authority to bind the Matson Navigation Company to a payment of ten hours work for labor performed on the ship "Hilonian" at this time when only 8½ hours were actually worked by the operator?

Mr. FRANK.—I object to that as asking the witness for a conclusion of law.

Mr. McCLANAHAN.—Q. Answer the question.

A. No, sir.

Q. Did you at the time of the repair work being done on the "Hilonian" have knowledge of any custom by which operators on similar work were paid for ten hours when they actually worked only eight and one-half? [1454—1367]

Mr. FRANK.—I object to that as immaterial, whether the Captain had knowledge of any custom of that nature.

A. No, sir, I had not.

Mr. McCLANAHAN.—Q. Did you at that time have knowledge of any custom by which a shop paid to an operator in doing repair work nine hours pay for eight and a half hours work?

Mr. FRANK.—Same objection.

A. I did not.

Mr. McCLANAHAN.—Q. Did any other officer of the Matson Navigation Company have such knowledge of such custom?

(Testimony of William Matson.)

Mr. FRANK.—How can he testify to what other officers of the Matson Navigation Company had knowledge of.

A. Not that I know of.

Mr. McCLANAHAN.—That straightens it out.

Mr. FRANK.—You ought not to put it in a position where it requires straightening out.

Mr. McCLANAHAN.—I do not know about that.

Mr. FRANK.—Then you are learning something.

Mr. McCLANAHAN.—I am learning something every day.

Mr. FRANK.—You need it.

Mr. McCLANAHAN.—I appreciate that, too, Mr. Frank; some people do not appreciate it.

Q. Captain, do you remember work that as matters developed was required on the tank top of the “Hilsonian”? A. Yes, sir.

Q. With reference to that work, state whether or not you received a bid for it from the United Engineering Works. A. I did.

Q. I hand you a paper dated August 31st, 1909, and ask you if you can identify that letter (handing). A. That is the letter.

Q. That is the bid for the tank-top work?

A. Yes, sir. [1455—1368]

Q. Was that bid accepted or rejected, Captain?

A. Rejected.

Q. Did you have a conversation with Mr. Gray at the time of its rejection? A. Yes, sir.

Q. What was it?

A. Mr. Gray said that he would guarantee to do it

(Testimony of William Matson.)

within that bid, and a timekeeper could keep time on it.

Q. Whose timekeeper?

A. The Matson Navigation Company's.

Q. Did Mr. Gray say anything else about keeping time? A. No, sir.

Q. And under those circumstances state whether or not you authorized the work to be done.

A. I did.

Q. Now, state again definitely, Captain, what were the conditions under which you authorized the work to be done.

Mr. FRANK.—You have got it in once. Now, do you want to double up on it?

A. You want me to repeat the same thing over again?

Mr. McCLANAHAN.—Q. Practically, yes. Make it a little clearer what were the conditions under which you authorized that work to be done.

A. He guaranteed it would be done within that limit of twelve hundred dollars, or whatever it is, I have forgotten now, and if it was any less we would get the credit for it.

Q. Under these circumstances you were to keep time on the job? A. Yes, sir.

Q. Do you know whether Mr. Gray did anything with reference to keeping time on the job?

A. No, sir, I do not.

Mr. FRANK.—I object to all that on the ground that it is calling for the conclusion of the witness, that he guaranteed to do this and he guaranteed to do

(Testimony of William Matson.)

that; we are entitled to the conversations.

Mr. McCLANAHAN.—We offer in evidence the letter dated San Francisco, California, August 31st, 1909, addressed to the Matson [1456—1369] Navigation Company, and signed by the United Engineering Works, per H. P. Gray, which has been identified by the witness, and ask that it be marked Respondent's Matson No. 1.

Mr. FRANK.—We object to it as incompetent, irrelevant and immaterial.

(The letter is marked "Respondent's Matson No. 1" and is as follows:)

[Respondent's Matson No. 1.]

"San Francisco, Cal. August 31, 1909.

Matson Navigation Co.,

Gentlemen: We propose to replat the top of after double bottom tank where bulged, on one side only, from shaft alley out to margin angle and from shaft alley bulkhead to next bulkhead directly forward of same, for the sum of one thousand two hundred fifty (\$1250.00) Dollars. This price includes the chemists charge and such stiffening as may be required, also angles supporting tank top plating, but does not include cleaning of tank or testing of same. We will guarantee to make tight all the new work but if any leakage in old work shows up on testing an extra price will be made upon all such old work as it may be deemed necessary to make tight. The above figure contemplates the renewal of the angle at the top

(Testimony of William Matson.)

of margin in way of new plating.

Respectfully submitted,

UNITED ENGINEERING WORKS.

Per H. P. GRAY."

Mr. McCLANAHAN.—Q. During the progress of the work on the "Hilonian" did you at any time make any agreement or contract with reference to additional work on the ship?

Mr. FRANK.—I object to that also as asking for a conclusion [1457—1370] of the witness.

A. I did.

Mr. McCLANAHAN.—Q. Was it in writing or verbal? A. No, sir, verbal.

Q. Who was the contract made with?

A. Mr. Gray.

Q. Where was it made?

A. Right in the pilot-house of the "Hilonian."

Q. On board the ship? A. Yes, sir.

Q. And where was the "Hilonian" at that time?

A. At the United Engineering Company's yard.

Q. Was this prior to your leaving here on September 10? A. Yes, sir.

Q. What was the contract, Captain?

A. The smokestack.

Q. The smokestack contract? A. Yes, sir.

Q. And what was the agreed price for the smokestack? A. \$900.

Q. That was a new smokestack? A. Yes, sir.

Mr. FRANK.—I object to that method of examining the witness, and I shall have to insist upon it. The witness can tell what the contract was without

(Testimony of William Matson.)

your testifying in the case.

Mr. McCLANAHAN.—Q. Who was present at the time that the smokestack contract was entered into?

A. Captain Saunders and I think Captain Johnston. I am not sure whether Mr. E. D. Tenny was on board or not. I am not sure. I will not swear to it. I had some gentlemen with me over there and I don't remember whether he was.

Q. Can you remember anybody else?

A. Klitgaard was there, too, I think.

Q. See if you can now state all of the conversation with reference to the smokestack contract.

A. He was to take the old one out and instal—
[1458—1371]

Mr. FRANK.—State what was said, not what he was to do.

Mr. McCLANAHAN.—Q. Captain, you are not required to give the exact words of the conversation unless you remember them. If you cannot remember the words, state the substance, as you started to do.

A. He was to take the old one out and replace it with a new one, and do all the work for the \$900.

Q. Was anything said at that time as to the time within which the work was to be done?

A. It was not to delay the ship.

Q. What was that understanding?

A. The understanding was that the ship was to be ready in, I think, so many working days, 26, I think—I do not remember exactly, twenty something.

(Testimony of William Matson.)

Q. Can you refresh your memory as to when the ship was to be finished by referring to "Christy Exhibit B" which you have identified?

Mr. FRANK.—That is not his memorandum. It is not a proper thing for him to refresh his memory from.

Mr. McCLANAHAN.—You have made that statement several times, intimating that a witness cannot refresh his memory except from a memorandum made by you and I take square issue with you on that proposition.

Mr. FRANK.—I never said he could refresh his memory from a memorandum made by me.

A. He was to have that ship ready in 25 working days and it was not to interfere with that.

Mr. McCLANAHAN.—Q. That is the smokestack was not to interfere with completing the job under the original condition of 25 days?

A. That is right.

Q. Was that agreed to by Mr. Gray?

A. Yes, sir; he accepted it verbally and said he would do it. [1459—1372]

Q. Did you ever at any time other than the work that you have just mentioned talk with Mr. Gray or any other officer of the United Engineering Works with reference to the time within which the original specification work was to be done?

A. I don't remember having had any conversation, except he was to have it finished in the specified time, which he agreed to.

(Testimony of William Matson.)

Cross-examination.

Mr. FRANK.—Q. Captain, the Matson Navigation Company's business is not your only business, is it?

Mr. McCLANAHAN.—I object to that as immaterial.

A. No, sir; I have other things.

Mr. FRANK.—Q. A great many, haven't you?

A. A few. I do not know how many.

Q. Well, you are a very busy man, in very many different lines, are you not?

A. Yes, sir, I think so.

Q. You have the Matson Navigation Company; you have some oil companies, have you not?

A. Yes, sir.

Q. President of the Chamber of Commerce, which takes up a great deal of your time?

A. I am out now.

Q. Well, you were during this time?

A. No, sir, I was not.

Q. Not at that time? A. No, sir.

Q. Well, you had a great many other duties in a great many other lines, did you not?

A. Perhaps some.

Q. And none of this work you could attend to personally? You had to have people under you on whom you relied, did you not?

A. No, sir. I differ with you on that. I generally looked after some of it myself if I was in town.

Q. But you had people whose business it was to look out for it for you?

(Testimony of William Matson.)

A. Some of it. [1460—1373]

Q. Now, Captain Saunders was your port captain?

A. Yes, sir.

Q. And as port captain he had the care and control of all your vessels in port, overseeing the repairs and matters of that sort, did he not?

A. He never used to have anything to do with the engine part of the work.

Q. He had the general supervision of the repairs, did he not, and of the hiring of the men and things of that sort? A. No, sir.

Q. What did he have to do?

A. He was general superintendent of the loading and discharge of the ships and reported to me when anything was wrong with the ships, and some little details of that kind, it was his duty.

Q. Did he not have the superintendence of the repair of the ships? A. No, sir.

Q. Had he not always exercised authority in the repair of your vessels from the time you began your work with the United Engineering Works?

A. No, sir.

Q. When did he begin?

A. He never had the authority to superintend the job of the engineering department.

Q. Not to superintend the job of the engineering department? A. No, sir.

Q. But other jobs he did? A. Yes, sir.

Q. So you draw the line on the engineering department, is that it? A. Yes, sir.

Q. Who had the superintending of the engineer-

(Testimony of William Matson.)

ing department?

A. There was not any regular superintendent until I got Mr. [1461—1374] Diericx. Now, he is the general superintendent. In the case of the “Hilsonian” the chief engineer was there to see that the work was carried out according to the specifications.

Q. The chief engineer ordered the work. He drew the original specifications, did he not?

A. Yes, sir.

Q. And he was there to see that the vessel was properly repaired, was he not?

A. Yes, sir, to see that the specifications were carried out.

Q. Now, you know, as a matter of fact, Captain, that those specifications turned out to be inadequate, did they not? A. Not that I know of.

Q. You did not know about that? A. No, sir.

Q. You did not know that the engines of the vessel were in a very bad condition, very much worse than you anticipated from the specifications?

A. No, sir.

Q. You did not know it? A. No, sir.

Q. You did not know when you took the engines apart a great many things had to be done that were not originally contemplated? A. No, sir.

Q. You did not know that Mr. Klitgaard ordered those things to be done in conjunction with Captain Saunders and also with Mr. Putzar? A. I did not.

Q. You did not know that? A. No, sir.
[1462—1375]

(Testimony of William Matson.)

Q. You did know it, however, before the repairs were completed, did you not?

A. I was east when she was completed, and I was dumbfounded when I found out what had been going on.

Q. You were dumbfounded? A. Yes, sir.

Q. You are not an engineer yourself, are you, Captain? A. No, but I do know a little something.

Q. Well, you know a little something about everything, don't you, Captain?

A. Well, not much, but a little.

Q. What I mean by that is you have had no experience as an engineer in anything of that kind?

A. No, except what I picked up.

Q. I think your experience is mostly that of a master of sailing vessels?

A. Well, I have had some other experience, too.

Q. But when you went to sea, you went to sea in sailing vessels, did you not? A. Yes, sir.

Q. You never went to sea in steamships, except as a passenger, did you?

A. Let me tell you one thing; I made the first engine that was ever made around San Francisco Bay here, an engine for hoisting.

Q. When you say you made it, you mean you draughted it, do you?

A. Yes, I draughted it, so I did know something about it.

Q. That ended your engineering experience, did it not, Captain?

A. No, not altogether. I have been thinking about

(Testimony of William Matson.)

it for some time.

Q. How do you employ Captain Saunders—have you a written contract with him?

Mr. McCLANAHAN.—I object to that as immaterial.

A. No.

Mr. FRANK.—Q. You have not? A. No.

Q. How long has he been in your employ? [1463—1376]

A. Oh, I don't know; I think 5 or 6 years or 4 or 5 years.

Q. He O.K.'s all bills for repairs, does he not, before they are paid? A. No.

Q. He does not?

A. No. Now, Mr. Diericx O.K.'s them.

Q. I mean before Mr. Diericx?

A. Before Mr. Diericx, yes, he did O.K. some of them.

Q. Are you the only one in the Matson Navigation Company that has anything to do with the active business operations of that company?

A. I believe so.

Q. Have you not a board of directors?

A. Oh, yes; we have a board of directors; I did not know what you meant.

Q. They meet regularly, do they not?

A. Once a month.

Q. And these matters are brought up before them?

A. Sometimes they are, and sometimes not.

Q. And you say you have been doing this work with the United Engineering Works for 8 or 10 years?

(Testimony of William Matson.)

A. Well, a good many years; I could not say exactly how many.

Q. Before Captain Sanders came there, who attended to the details of supervising the repairs?

A. Myself.

Q. You did it yourself before that?

A. Yes, and Captain Rock was there for quite a while, too.

Q. Now, I understand you that these bids for these repairs were rejected. A. Yes, the first ones.

Q. Were they not all rejected? You never made a written acceptance of any of them, did you?

A. Not that I remember; no.

Q. And the only acceptance which you contend you made in this cause was a verbal one to Mr. Gray, telling him, as you put it, that you were not satisfied with the price in that bid; is that right?

A. In the last bid I accepted from him. [1464—1377]

Q. You say you accepted—let us see what happened between you. You told him you were not satisfied with the price—is not that it?

A. The first one I did that.

Q. Did you not do it with the second one?

A. Yes, I told him that I thought the price was still high and he suggested that I put a timekeeper on, he wanted the job so bad, in order to get that ship over to the yard.

Q. Let us not deal so much with your conclusions, Captain. Give us the conversation that passed between you. A. I am just telling you.

(Testimony of William Matson.)

Q. No, you are not; you are giving your conclusions. What did Mr. Gray say, and what did you say on that occasion, and what was the occasion?

Mr. McCLANAHAN.—Just one moment, Captain. Captain, let me instruct you that you are not required, if you do not remember the exact words, to give the exact words.

Mr. FRANK.—I object to that instruction at this time until the captain has found himself unable to do that.

A. Well, I will do it as near as I can.

Mr. FRANK.—Q. Now, Captain, let you and I get along together. We know each other well enough to be able to talk to each other. In the first place, how long was it after that bid came in that you saw Mr. Gray?

A. I could not answer that question. I think the bid came in somewhere about the 2d, and it was not until about the 17th or 18th.

Q. Between the 2d and the 17th or 18th, how many times did you see Mr. Gray?

A. I don't remember. I could not tell you that because he used to be in the office pretty near every other day, every now and then.

Q. Were these conversations that you speak of held in the [1465—1378] office? A. Yes, sir.

Q. What did you say to him upon this subject and what did he say to you upon this subject?

A. He said he would take that job and guarantee the Matson Navigation Company that he would do the job within those figures, \$11,749.

(Testimony of William Matson.)

Q. And what did you say?

A. I told him I would accept it.

Q. Is that all the conversation? Why should he guarantee that he would do it within those figures when his written bid was those figures?

A. I told him I still felt that he was high, and I would put a timekeeper on over there and see how that would come out, and there was a crank-shaft—

Q. (Intg.) Just one moment. You say you put a timekeeper on there; why did you put a timekeeper on? What was the conversation between you and him respecting that?

A. You do not seem to give me a chance, or you did not catch my answer. I say I told him I would put that timekeeper on and to see that we would get a reduction on that crank-shaft which we expected would come out on that day.

Q. Is that the only reduction you expected in that bid? A. That is all, \$2,000—about.

Q. Is it not a fact, Captain, that you told him the bid was too high and you would not pay that amount, and that nothing was said then about a crank-shaft, and you said you would put a timekeeper on there and see what it would cost and if it cost less than the amount of the bid, that—

A. (Intg.) What do you mean?

Q. Wait until I finish my question.

A. No, nothing of the kind.

Q. Just wait a moment, Captain. Just keep cool, Captain. [1466—1379]

(Testimony of William Matson.)

A. Well, don't try to get something on me that is not so.

Q. You and I will come together on that yet; you will see. (Addressing the Reporter.) Just read my question as far as it has gone, Mr. Reporter. (Question read by the Reporter.) And that you would pay him according to the timekeeper's time?

A. Not on your life.

Q. Just one moment, Captain.

A. Now, don't try that.

Q. Just one moment, Captain. Do you remember me calling upon you about this bill before the suit was brought in this matter?

A. You called on me; yes.

Q. You remember the conversation you and I had at that time? A. No, I do not.

Q. You don't remember the conversation?

A. No, sir, I do not because I was very much surprised that you took that suit, and I am still surprised.

Q. In other words, you offered me a retainer in the matter and I told you I was engaged?

A. Yes. You are my man. I have always felt since that if you had known enough about it you never would have taken the case.

Q. You appreciate, however, that there are two sides to every case? A. Yes, sir.

Q. And that different people have different views upon a subject matter, the same as you have?

A. Yes, sir.

Q. Now, you don't remember the conversation be-

(Testimony of William Matson.)

tween us at that time? A. No.

Q. Now, see if I can refresh your recollection about it; you remember I asked you what was the matter with this thing and you told me at that time that you would not accept that amount in that bid and you would put a timekeeper on, and it was the [1467—1380] understanding with Gray that you should get a reduction on it if the time and the material did not amount to that? A. No.

Q. You don't recollect that?

A. No, sir, because I never said that.

Q. Well, our recollections differ, Captain. Do you remember ever saying anything to me about a crank-shaft?

A. No, I don't remember, Mr. Frank. You know those things I forget. I don't carry them in my head all the time.

Q. Now, Captain, do you remember ever saying anything about a crank-shaft before this examination, and that the reduction of \$2,000 for the crank-shaft did not have to come—

A. (Intg.) You mean—

Q. I mean to the United Engineering Works or anybody representing them? A. No.

Q. This is the first time that that subject has come out? A. From me, it is.

Q. When did you first take this matter up with your counsel to prepare for this examination to-day, Captain?

A. I think he telephoned to me Saturday and told me I was to be on here for Monday morning.

(Testimony of William Matson.)

Q. Did he go over this matter with you on Saturday? A. Only part of it.

Q. Did he suggest anything to you about a crank-shaft at that time?

A. No. In fact, I don't care to have anybody suggest these things to me, Mr. Frank. I try to tell them just as I remember them, and nothing else.

Q. I give you credit for that, Captain, all right enough, but I want to find out what the facts are because this crank-shaft business is very new to me. Who first suggested the possibility of the crank-shaft not having to come out? [1468—1381]

A. I think the chief engineer, if I am not mistaken.

Q. You say if you are not mistaken; have you any distinct recollection of that?

A. I think he told me he did not think it would need to come out, and then Mr. Christy went out when the ship came in and examined her, and he also reported that he thought the crank-shaft was all right.

Q. To whom did he report that?

A. He told that to me in the office.

Q. When did Mr. Klitgaard report to you that he did not think the crank-shaft would have to come out?

A. I do not recall exactly that time, Mr. Frank.

Q. Then, by the crank-shaft not coming out, you wish to give us to understand that it was the idea of Mr. Christy and of Mr. Klitgaard that the crank-shaft was all right; is that it? A. Yes.

Q. And required no work to be done on it?

A. It did not require to come out. I don't remem-

(Testimony of William Matson.)

ber about any work on it.

Q. What do you mean by coming out?

A. Lifted out of place and taken to the shop.

Q. You said that Mr. Christy said the crank-shaft was all right?

A. That it looked to him that it was all right; that is just what he said.

Q. And did Mr. Klitgaard say it looked to him as if it was all right? A. He thought it was all right.

Q. And you understood both of them to mean that the crank-shaft was all right and required no work done on it; is that right?

A. It did not require to come out; I don't say about no work on it.

Q. What do you mean by "coming out"? [1469—1382]

A. Well, if the crank-shaft has to come out it has to be taken out of the ship and lifted on deck and from there into the shop. That is coming out.

Q. Well, by that you mean it was not required to go in to the shop; is that it? A. Yes, sir.

Q. Well, now, Mr. Matson, do you not know, as a matter of fact, that it was not determined that that crank-shaft should not go into the shop until after the engine was stripped and they started to take the crank-shaft out of the ship?

A. That may be all right.

Q. And that was the first time it ever occurred to anybody not to take it to the shop?

A. No, you are all wrong there.

Q. Why did they not take the crank-shaft out of

(Testimony of William Matson.)

the ship, Captain, do you know?

A. No, I do not.

Q. You don't know?

A. There was nothing the matter with it, otherwise they would have taken it out.

Q. Your idea, then, at the time you say you had this conversation with Mr. Gray was that it was possible there was nothing the matter with the crank-shaft and that no work would have to be done upon it; is that right?

A. When you say that no work—there might be a little something done in the ship which I know nothing about, but it did not have to come out of the ship.

Q. When you say “a little something done in the ship,” you mean work that was of little consequence?

A. That is right.

Q. Was there anything else said between you and Mr. Gray at the time of this conversation, respecting the conversation about the United Engineering Works doing these repairs after this bid was in and while it was under consideration?

A. Nothing that I remember. [1470—1383]

Q. And you still feel sure that you did not tell Mr. Gray or anyone connected with the United Engineering Works that you considered the bid too high and that therefore you would put on a time-keeper, and if it turned out that the work did not cost as much as the amount of the bid you were to have the work done at the lesser price?

A. No, I never said that.

Q. You never said that? A. No, sir.

(Testimony of William Matson.)

Q. Then am I to understand your present contention to be that you simply put on a timekeeper to ascertain what the difference would be in the cost in case the crank-shaft did not have to come out for repairs in the manner that you have testified to?

A. I think so.

Q. That is the only thing you put a timekeeper on for? A. That is the only thing he was there for.

Q. The only thing, that is, to keep time on the crank-shaft job?

A. To keep tab on everything around there with regard to time.

Q. Why should he keep time on anything except the crank-shaft job if that was the only thing that would make any difference in the contract price?

A. Well, there are a good many reasons for that. I think there is a good deal of work connected with that—you know something about an engine, I suppose you know all about it, and you know that you can get at the crank-shaft, but it takes a lot of tearing down, and different things coming along, and I thought it would be a good thing to have a timekeeper on there anyway.

Q. What is the good of a timekeeper if you have a specified figure for which the work is to be done?

A. I wanted to know what it was going to cost, anyway. I was satisfied in my mind that the bids were too high, but at the same time I accepted the bid and gave them the job, but I [1471—1384] thought I would keep a little tab on them anyway.

Q. So it was only a matter of curiosity on your

(Testimony of William Matson.)

part that you put a timekeeper on there?

A. A matter of knowledge, not of curiosity. I would like to know.

Q. When I say "curiosity" I mean the timekeeper was not there for any practical purpose connected with the man you were to put on that particular job?

A. On that particular specification, only the crank-shaft.

Q. With reference to Mr. Putzar, you say you inquired of Mr. Samuels concerning Mr. Putzar, did you not?

A. I think I did. I have not asked Samuels whether I did, or not, and I have forgotten all about it.

Q. Before you took him you satisfied yourself of his ability and integrity, did you not?

A. Mr. Gray said he was all right. He said that there were only about three men in the town he would allow to be timekeepers in his place, and amongst those three was Mr. Putzar.

Q. Mr. Gray said he would not allow anybody except those three men to be timekeepers in his place?

A. Yes, that is what he said.

Q. Are you positive about that?

A. Yes, I am positive. He said he would not work with any others.

Q. Did you find out from the Oceanic people what Mr. Putzar's standing and position was?

A. I think I spoke to Samuels about it and he said he was all right.

Q. He was the superintending engineer of the

(Testimony of William Matson.)

Oceanic Steamship Company, was he not?

A. I don't know that.

Q. Did he not tell you so?

A. I do not remember whether he did or not.

Q. Well, did you not know, as a matter of fact, Captain, that he was such? Have you not that information of conditions on the [1472—1385] waterfront sufficient to say that you know that?

A. I would not want to say because I don't think I ever asked that.

Q. Don't you know it now?

A. No, I don't know it now. I could put my hand on the Bible and say I don't know it now.

Q. You don't remember what Mr. Samuels told you about him?

A. He told me that he thought he was all right.

Q. Have you made any inquiry since that time concerning Mr. Putzar's standing?

A. No, I think not.

Q. You would not want to say now, Captain Matson, that Mr. Putzar was not a man of the highest integrity in his business, and of first-class skill, would you?

A. I don't know that I would; no. I would not say anything about it. If you asked me what kind of a man he was I would refuse to answer.

Q. You would not want to undertake to say that he was not a man who has the reputation amongst all people who have dealt with him as being a man of the very highest integrity?

A. I refuse to answer that question.

(Testimony of William Matson.)

Q. You refuse to answer the question? A. Yes.

Q. Well, you have every confidence in Mr. Samuels, in his integrity, have you not?

A. Yes. Don't ask me such things as that.

Q. What? A. Oh, that is all right.

Q. And you think more than that of him, do you not—you think Mr. Samuels is a man of the highest integrity and would not tell you that a man was all right— A. (Intg.) If he did not believe it.

Q. Yes, if he did not believe it. A. Yes.

Q. And Mr. Samuels has been managing the Oceanic ever since its organization, has he not? [1473—1386]

A. Yes, that is right.

Q. And you have been in very close touch with him all that time?

A. Yes, all the time; he is a personal friend of mine.

Q. During the time you were here, Mr. Matson, after the "Hilonian" went over to the United Engineering Works for repairs, and up to September 10, when you say you went away, did you go over to the United Engineering Works to see how the repairs were progressing?

A. Yes, I went over there once or twice, I believe.

Q. With whom did you go?

A. I do not remember now.

Q. Who did you meet over there on those occasions representing the United Engineering Works?

A. I don't remember that I met any of them.

Q. You don't remember that you met any of them?

(Testimony of William Matson.)

A. No. I just merely went aboard the ship. I did talk to the chief engineer once or twice.

Q. Did you speak to Mr. Putzar on any of those occasions? A. I never saw him when I was there.

Q. Did you inquire if he was on the job?

A. I think I did and somebody said he was in the shop.

Q. You never asked him during that time for any reports, did you? A. No.

Q. At the time that you met Mr. Klitgaard, can you give us any idea of the date?

A. No, I could not.

Q. Can you approximate it at all? A. No.

Q. Was it shortly before you went away?

A. Yes, I suppose a week or so. I do not remember exactly now what date it was.

Q. At the time you went over there, were you contemplating leaving?

A. Well, yes, I think I was—the last time. I was contemplating leaving anyway before the job [1474—1387] was finished because I knew I had to go.

Q. You knew you had to go? A. Yes, sir.

Q. At the time you went over with Mr. Klitgaard, did you go down into the ship? A. Yes, I did.

Q. Did Mr. Klitgaard tell you at that time what they were doing?

A. I think that he spoke to me about what work was going on in general—that is all.

Q. Well, he told you what they were doing, did he not? A. I do not remember.

(Testimony of William Matson.)

Q. Did he make any inquiry about what they were doing?

A. I suppose I did. We went down in the engine-room and looked and he told me the work was going on. I do not remember anything else. I did not put down any notes.

Q. Did he tell you at that time that when they opened her up they found they had to depart from the specifications? A. No, he did not.

Q. He did not tell you that? A. No.

Q. Did he ever tell you that?

A. No. I think one time he told me something about a patch somewhere on the condenser, which he said was going to be cheaper, or that anyway that it was not going to cost any more money.

Q. Is that all that he told you about the changes?

A. I don't remember now, Mr. Frank. That is a long time ago. I never expected to come in here before you on this.

Q. Well, Captain, I am sorry you are here.

A. You bet! So am I.

Q. Did you ever talk to Captain Saunders about the matter?

A. I think I did, also about same patch on the condenser.

Q. That is the only thing you spoke to Captain Saunders about changes from the specifications?

A. I think that is about what [1475—1388] he reported to me, that it was changed and was going to be cheaper.

Q. And he did not report to you anything else?

(Testimony of William Matson.)

A. No.

Q. That they were making changes all along the line? A. No.

Q. Did you ever ask him?

A. No, I don't think I did.

Q. You say that Mr. Klitgaard had handed in his resignation?

A. He told me he was going to leave.

Q. When was it he told you he was going to leave?

A. He told me that, I think, the trip before the ship laid up.

Q. The trip before the ship laid up? A. Yes.

Q. At that time was it agreed as to the time when he was going to leave?

A. No—oh, yes, it was, he said when the ship was finished, the repairs, he was going to quit.

Q. That he was going to quit? A. Yes.

Q. When was it that you engaged Mr. Putzar to take the ship out after the repairs were finished?

A. Captain Saunders had hired him when I was away east.

Q. Captain Saunders had hired him? A. Yes.

Q. And that was while you were away in the east?

A. The ship had left the yard while I was east.

Q. I understood you were east in September. On September 10th you went east? A. Yes, sir.

Q. And then he was hired by Captain Saunders between September 10th and September 27th; is that it? A. Yes, sir.

Q. Just at what period he was hired though you do not know?

(Testimony of William Matson.)

A. No. I had a talk with Mr. Putzar about it once, about at the time he went over to keep time, that if Klitgaard did leave that he was to have the ship. I do not remember exactly the date.

Q. As a matter of fact, then, before Mr. Putzar went on as [1476—1389] timekeeper you had agreed with him that he was to have the ship as chief engineer on the completion of the repairs; is that right? A. I think so.

Q. Before you went east, did Mr. Putzar say anything to you about the nature of the repairs being done? A. No.

Q. When you first met Mr. Putzar concerning this matter, what did you say to him?

A. I do not remember now.

Q. You do not remember?

A. No. I probably told him I wanted a timekeeper and wanted him to take the job. I guess that was the conversation. And I also told him that if Klitgaard, the chief engineer, would leave that he would get the ship.

Q. And you think that was the whole of the conversation? A. I think so, yes, sir.

Q. You told him he was to go over there and act as timekeeper and that if Chief Engineer Klitgaard left he was to get the ship?

A. Yes, that is all.

Q. Is that all?

A. Yes, sir. He was never in the office more than once or twice.

(Testimony of William Matson.)

Q. And that was all the conversation you had with him?

A. That is all as far as I can remember.

Q. Now, I understand you were absent from here after September 27th; do you remember what date you went away again?

A. No. I would have to look it up in the books, Mr. Frank.

Q. Well, do you remember whether it was very shortly after September 27th?

A. I think the ship made a trip between times.

Q. You think the ship made a trip between times?

A. Yes, I think so. I can give you the date when I left again for the east; I can go back to the office and look it up.

Q. I would like to have that date?

A. I can telephone now [1477—1390] to the office and find out that date.

Mr. McCLANAHAN.—After investigating the records of the office the witness ascertains that he left here for the east on November 4th and returned on December 9th or 10th.

Mr. FRANK.—Q. After September 27th, when you returned, do you remember when you first made inquiry for reports of the timekeeper on the “Hilonian”?

A. I do not remember the exact date; no. I think I notified Saunders to notify the United Engineering Works and also Putzar to bring in a report. They had not brought it in when I got back.

Q. You notified Saunders? A. Yes.

(Testimony of William Matson.)

Q. And what did you say about the United Engineering Works? A. To bring the bill in.

Q. To bring their bill in? A. Yes.

Q. I am speaking of reports of the timekeeper.

A. The timekeeper too.

Q. You notified Saunders?

A. Yes, to tell him, and I think he told me that he would try to make it up on the trip going down to Honolulu.

Q. What report was it you asked Saunders to get from the timekeeper? A. Just his time.

Q. Just his time?

A. The time that he kept tab on over there.

Q. Did you make any inquiry in your own office for it, among your own files?

A. I found they had not got it.

Q. I am asking you if you made such inquiry.

A. I think I did.

Q. And you were told they had not got it?

A. Yes.

Q. Who did you ask for it in your office? [1478—1391]

A. I suppose some of the bookkeepers; I cannot tell you offhand.

Q. So far as you know, then, it might have been in your office all the time and been mislaid?

A. No. So far as I know they were not there.

Q. You do not know whether it was there or not?

A. Yes, I know they were not there. I say they were not there.

Q. Personally you did not make any investigation,

(Testimony of William Matson.)

did you? A. Yes, I did.

Q. What investigation did you make?

A. Even when I was in New York I telegraphed them to have the bills brought in, because they telegraphed to me for money, and I said, "You have them, bring the bills in and check them up and pay them according to contract."

Q. That is not the subject I am talking about, Mr. Matson. I am asking you now about this book here, "Respondent Curtis Exhibit No. 4," containing the time-sheets of Putzar, which were in your possession.

A. They were not in my possession at that time.

Q. I am asking you now what inquiry you made for these time-sheets.

A. I asked Captain Saunders if they were sent in there and he said he had not got them.

Q. That is all you know about that?

A. I knew they were not there.

Q. You made no other inquiry?

A. I made lots of them.

Q. What is it, Captain?

A. I asked them if the papers and books and time had come into the office and they said no. That man Curtis never kept an account in his life straight.

Q. Now, keep cool, Captain.

A. Well, don't try to [1479—1392] come any funny business because I will not stand for it. I refuse to answer you on that question.

Q. Now, keep cool, Captain. I am not coming any funny business at all. I am questioning you as I have a right to do, and politely too, Captain, and I

(Testimony of William Matson.)

expect you to give me a polite reply in the same way. Now, outside of the inquiries that you have just testified to, you made no further inquiry about the book, did you?

A. I made inquiries whether they were in the office.

Mr. McCLANAHAN.—I object to the statement of counsel as the question applies to the book. The captain has not testified that he made inquiry about a book. There is nothing to show that he had any knowledge of a book.

Mr. FRANK.—Well, he has knowledge now of a book. He sees it lying before him and he knows what the book contains.

Q. Don't you Captain?

A. I don't know; I never looked at it.

Q. You never looked at it? A. No.

Q. You know now that those are the time-sheets of Putzar that were in your office and that have been produced by your counsel?

A. I suppose those are the time-sheets. I have not looked at them. I don't know anything about them. The only thing I have looked at is bills, and I found they were not correct.

Q. You never looked at these time-sheets?

A. No.

Q. Why were you inquiring for them, Captain, if it was not your purpose to look at them?

Mr. McCLANAHAN.—I object to the question upon the ground that the captain has not said he was inquiring for the time-sheets referred to. His testimony applies to Putzar's [1480—1393] report

(Testimony of William Matson.)

on the time kept.

Mr. FRANK.—Q. Now, let us have the answer, Captain.

A. I only asked for the report of Mr. Putzar so that I could see how it compared with the bills.

Q. Then am I to understand, Captain, that you were not looking at all for Putzar's time-sheets?

A. I was looking for his report.

Q. Do you make a distinction between his time-sheets and his report?

A. I don't know anything about this book part of it. I have not gone into that part.

Q. You don't know anything about the time-sheets and you were not looking for the time-sheets?

A. I wanted his report so I could compare it with the bills.

Q. What kind of a report, what kind of a detail in that report were you expecting?

A. I expected it to be like any other time-keepers keeping a book.

Q. What was the nature of the report?

A. Mr. Frank, a timekeeper does not have to make a book up two months after the work is all over. If he keeps his time he will have it in the book and he can hand that in right away after the work is finished.

Q. Then, after all, it was the book you were looking for; is that right? A. His report.

Q. It has been suggested by your counsel that you are talking about something else as a report. I am trying to find out from you what that something else

(Testimony of William Matson.)

was. Was that the report as contained in his time-sheets in this book, or was it a separate and independent report of some other kind that you were looking for?

A. I was looking for his report. I don't know what is in that book, I have not gone through it.
[1481—1394]

Q. You have not gone through it? A. No.

Q. Then it is not this book which you say was not in your office. When you speak about his report not being in your office, you do not wish us to understand that this book was not in your office all the time? Is that right? I want to find out what you are talking about, Captain.

A. Well, you try to find just what I am talking about. That book was not in the office for two months after the job was finished. You just said that I was trying to hire you as the attorney; I did not know that I should hire anybody until I got the report.

Q. Well, if that is so, Captain, then we are agreed upon it that when you speak of a report you are speaking of this book, and not as your counsel suggested, of some other book; is that right?

Mr. McCLANAHAN.—I will have to correct the suggestion of counsel. That was not my suggestion. I simply objected to counsel tying the witness down to an inquiry for that book. It may be that that is the report of Putzar but the witness did not say he was looking for that book.

Mr. FRANK.—Very well. We are trying to find

(Testimony of William Matson.)

out now definitely so that there will be no misunderstanding or dispute about it what it was Captain Matson was looking for.

A. Not that book ; I know nothing about that book. I was looking for his daily book report on the job that he was working on.

Q. His daily book ? A. Yes.

Q. You mean—

A. (Intg.) I don't mean anything but the one you carry in your pocket all day and put down the names, which anyone would do in keeping a tally. Did you ever keep a tally?

Q. What you were looking for then was not his report as embodied [1482—1395] in the time-sheets signed by himself, but you were looking for another and different book which you thought he kept?

A. I was looking for his daily report. I did not know what is put in the book here.

Q. You have never examined the book ?

A. I have not gone into that.

Q. That is what I want to get at, Captain ; then it was not this book you were referring to when you said— A. (Intg.) Now, just a minute.

Q. Let me finish my question.

A. Just a minute. I have not looked at that book since I came in. How do I know whether it is Putzar's or somebody else's.

Q. You have been examined upon it by your counsel and you have testified about it. Now, look at it and answer me if it is that book.

(Testimony of William Matson.)

A. Who made the book up?

Q. Look at it and see. That has come from your possession. Your counsel has produced it here.

A. That is the book that was brought in the office.

Q. That is the book you were looking for?

A. That is not the report I was looking for.

Q. Then when you say there was no report from him there, you do not mean this book?

A. I mean that book did not come in for two months afterwards.

Q. That statement you make upon what you have already stated as being what was told you by Captain Saunders, or somebody else; is that it?

A. I don't know what you mean.

Q. You have said that you inquired for Putzar's report, have you not? A. Yes.

Q. And you say that this book is his report?
[1483—1396]

A. That is the book, I guess, that was sent in the office a long time after, two or three months after the job was finished.

Q. How do you know that that book did not come in for two months afterwards? That is what I am trying to get at.

A. Well, I told you before I tried to find out if any report had come in, and there was none, and Captain Saunders told me that he said he would make it out on this trip down to Honolulu and back.

Q. Now, that is the extent of your information about that book coming in, is it not, Captain?

A. I refuse to answer.

(Testimony of William Matson.)

Q. Well, Captain, that is not reasonable, to refuse to answer. If it is the extent of your information I am entitled to know it; if it is not tell us what other information you may have. Now, I am not trying to lead you into saying something you do not want to say.

A. I am not afraid of saying anything, Frank, but I have been answering that three or four times.

Q. Well, it is my misfortune that I do not understand you and I want to get that straight.

A. Well, I am sorry. I refuse to answer and you can take me before the Court if you like.

Q. You refuse to answer as to whether or not that book is the report you are testifying to as Saunders having reported not having come in, or some other book; is that it?

Mr. McCLANAHAN.—I submit that that is not what he refuses to answer. The witness has refused to answer any more questions as to his knowledge of when that book came in, other than he has already testified to. [1484—1397]

Mr. FRANK.—Q. Is that it? A. That is right.

Q. On what do you base your statement that that book did not come in until two months afterwards?

A. I think I have already told you that the book was not in the office, the report was not in the office. I have told you I asked every clerk there and it was not there.

Q. That is what I want to know; you asked the clerks about it? A. Yes.

Q. And they told you it was not there?

(Testimony of William Matson.)

A. Yes. If my men in the office tell me that, then I say that is so. I am not keeping the books.

Q. Now, Captain, you did get a written report from Putzar, did you not, other than this book?

A. I believe I did; yes.

Q. Where is it?

A. I don't know. I got a letter of some kind. Have you not got it here, Mr. McClanahan?

Mr. FRANK.—What are you looking at me for?

Mr. McCLANAHAN.—I am waiting for you to talk.

Mr. FRANK.—Well, I have asked him where it is and he refers to you.

Mr. McCLANAHAN.—He said he does not know.

Mr. FRANK.—Q. What became of it when you last saw it?

A. I do not know where it is.

Mr. McCLANAHAN.—Do you wish it produced, Mr. Frank?

Mr. FRANK.—I am asking the witness about it. I am dealing with the witness.

A. (Continuing.) I don't know where it is, unless it is here in the papers, which I expect it is.

Q. Is that other written report the one you referred to as Putzar having said he would make up?

A. I don't know. [1485—1398]

Q. But I am asking you what you referred to. I am not asking you what the report was. I am asking you if that other written report is the one you referred to as the one Putzar said he would make up.

A. I don't know anything about it.

(Testimony of William Matson.)

Q. You don't know? A. No.

Q. That report was more than a letter, was it not?

A. I believe so.

Q. Was it not a detail of the work that was done, and his report on it?

A. I don't know anything about it.

Q. You don't know? A. No.

Q. You saw it, did you not, Mr. Matson?

A. I don't remember—yes, I have seen it. I have seen it once.

(A recess was here taken until 3 P. M.) [1486—1399]

AFTERNOON SESSION.

WILLIAM MATSON, cross-examination resumed:

Mr. FRANK.—Q. Now, coming back again, Captain, to this report of Mr. Putzar, you say that was a couple of months after the job was finished?

A. Somewhere in the neighborhood of that.

Q. When you got this report did you examine the bill with reference to it?

A. I think I looked at the bill, yes.

Q. Did you have any report from any other person connected with the job? A. No.

Q. Did you have a report from Klitgaard?

A. No.

Q. Are you sure about that?

A. I am sure about it.

Q. Did you never get a report from Klitgaard?

A. I don't know that I ever saw one. I know at that time he certainly never did.

(Testimony of William Matson.)

Q. Did you make any inquiry in your office to see if you had a report from Klitgaard?

A. I think I did. There was no report there. I did not expect any from him.

Q. Well, I can appreciate that, Captain, but at the same time there may have been a report there?

A. I think not.

Q. And that you overlooked it?

A. No, I don't overlook those things.

Q. Would not, as a rule, the engineer in charge make a report? A. He did.

Q. Did you confer with Klitgaard about the job at all?

A. I think the first time I seen Klitgaard after the time he left,—oh, I certainly did not see him for 3 or 4 months afterwards, and I don't think I spoke to him then. [1487—1400]

Q. Am I to understand you never conferred with Klitgaard about the job at all?

A. No, not that I can remember.

Q. Do you know if anybody conferred with him in your behalf? A. Not that I know of.

Q. You did not authorize anyone to confer with him on the subject? A. No.

Q. You were handling this entirely yourself at that time, were you not? A. At that time, yes.

Q. When did you call someone else in with respect to this bill?

A. I do not remember calling anybody in until I hired Mr. Diericx and then I had Diericx go over them.

(Testimony of William Matson.)

Q. When was that?

A. I cannot recall exactly the time.

Q. Give it to us approximately.

A. Then I would have to get back to the books and find when he came to work.

Q. You have not any idea of the time that he came to work? A. No, I have not.

Q. Probably Mr. Diericx could refresh your recollection upon it, if there is no objection.

Mr. McCLANAHAN.—We have no objection. I think it was the 1st of February.

Mr. DIERICX.—The 1st of February, 1910.

Mr. FRANK.—Q. Was that the first time, then, that you made an examination as to the details of this bill?

A. No, I don't think that was the first time. I looked over the bill before. After I asked to retain you as attorney I spoke to Mr. Brobeck and I think he came down and saw it. I do not exactly recall the date.

Q. Preceding that, and before you began to look for an attorney, when did you first begin to look into the bill?

A. As soon as I came back from Newport News.
[1488—1401]

Q. And that was about December 10th?

A. I left about December 10th. I think it was earlier than that, was it not?

Mr. DIERICX.—That was the time you returned?

A. Yes, I returned December 10th.

Mr. FRANK.—Q. With that now in your mind,

(Testimony of William Matson.)

Captain, how soon after that was it you began to take it up?

A. Just as soon as I got to the office I commenced to look into the bill because I had not got the time-keeper's report and I do not think we had the bills in the office until a long time after that, or sometime after.

Q. You mean by that to say that the bill was not presented to you until after December 10th?

A. I know it was a long time before I got the bill, yes. I don't believe it was.

Q. Are you speaking now, Captain, from recollection, or are you only speaking from an assumption or a supposition?

A. No, I am speaking from recollection, of going right in to find where the bill was. I would not positively state the date when that bill got there, but I know it was a long time after the ship got in commission and running.

Q. Do you make that statement from a report of somebody in your office?

A. I make the statement because I did not get the bills.

Q. Now, Captain, you must remember, of course, that you were away during a considerable time and there must have been someone in your office who has the custody of those bills.

A. Then call Captain Saunders.

Q. Did he have the custody of the bills?

A. He would look over them at that time when they would come in.

(Testimony of William Matson.)

Q. And it is your understanding at present that you did not have any bills in to your office for this, when you returned [1489—1402] on December 10th of that year?

Mr. McCLANAHAN.—His record shows that his return was December 9th or 10th.

Mr. FRANK.—Well, that is immaterial.

A. I could not answer that question straight off because I do not altogether remember the date when those bills came in, and I do not want to—

Q. (Intg.) That is what I want to get at, Captain; then you do not remember whether those bills were in the office at the time of your return or whether they came in afterwards; is that right?

A. I do not believe they were in the office.

Q. Don't you recall testifying this morning that while you were east you received a telegram as to whether or not they should pay, or asking for money for payment on those bills? A. Yes.

Q. Was it not your understanding that the bills were in at the time you received the telegram?

A. Well, they got in there, then, between the time I left and when I came back.

Q. Then, at the time you came back did you take the matter up? A. Yes.

Q. With anybody?

A. No, I looked over the bills. I don't know whether I took it up with Brobeck at that time, at the time I asked you. The dates I don't remember.

Q. Before you began to look for an attorney in the matter, did you not examine into the details of the

(Testimony of William Matson.)

bill? A. Yes, I did.

Q. With whom? A. With myself.

Q. With yourself? A. Yes.

Q. I show you "Schedule No. 1" attached to the libel in this case and ask you whether you recognize that as the bill that was then presented to you (handing). [1490—1403]

Mr. McCLANAHAN.—You mean a copy of the bill.

Mr. FRANK.—Yes.

Mr. McCLANAHAN.—Q. There are a number of pages to that, Captain.

A. Is that the bill attached to it?

Mr. McCLANAHAN.—That is what you are looking at now.

Mr. FRANK.—That is the whole bill.

A. That is the bill, is it?

Q. Yes, that is our understanding of it. What I want to get at is whether that is what you recognize as the bill? A. I never read that part of it.

Q. You never read that part of it, that is, referring to the heading of the bill?

A. No. I think that is the bill so far as I recollect.

Q. Have you the original bill in your possession that was presented to you at that time?

A. I have not got it now. I don't know whether the attorney has it, or somebody else.

Mr. FRANK.—(Addressing Mr. McClanahan.) Have you got the bill?

Mr. McCLANAHAN.—I don't think I have.

(Testimony of William Matson.)

Mr. FRANK.—I wish you would look through your papers, Mr. McClanahan. I would like to see it.

Mr. McCLANAHAN.—I don't remember ever receiving the original bills.

Mr. FRANK.—That is from your client.

Mr. McCLANAHAN.—Or from any source.

Mr. FRANK.—Well, it would come from your client. That is the only source.

Q. You turned them over to somebody, Captain, and you do not know what has become of them?

A. I turned them over to the office, or to Brobeck, or up here. We will try to hunt for them. [1491—1404]

Q. Yes, I would like to see the originals. Now, I understood you to say, Captain, when you looked over this "Schedule 1," that pages 1, 2 and 3 of that schedule, which contain the detail of the work done, you never looked at those?

A. I don't know. No, I never read that.

Q. What is that?

A. I did not read that summons through.

Q. It is no summons. A. Is it the bill?

Q. Yes.

A. Well, I read the whole bill through; yes.

Q. And you went through this detail, did you not?

A. As far as I can remember, yes,

Q. Just look at that bill, and I am referring now to pages 1, 2 and 3.

A. I would rather wait until you get the original bill. I do not know whether that is the true copy

(Testimony of William Matson.)

of it, or not. I don't remember those things. I have not got that by heart.

Mr. FRANK.—Mr. McClanahan, is there any question as to whether or not that is a true copy of the bill as originally rendered?

Mr. McCLANAHAN.—I raise no question of that kind.

Mr. FRANK.—Q. Do you accept the admission of your attorney that that is a true copy? He raises no question of that kind.

A. If he remembers, though, then I suppose it is.

Q. Assuming that that is a true copy of the original bill as presented to you, just kindly take that and go over it and indicate to me what portions of that work indicated on pages 1, 2 and 3, you objected to or found fault with at the time the bill was rendered to you.

A. Well, Mr. Frank, you had better give me a day off because I will not do it here. It was easy to find fault with a bill that was rendered for \$34,000 as against \$11,749. [1492—1405]

Q. Was that the basis of your objection to the bill?

A. Well, there were charges in there that I don't think was done on the ship.

Q. Well, point those out.

A. No, I will not. You had better give me a day off; I am not going through that whole list. You cannot go on with the Court unless I sit down and go through it. I objected against the bill as it stood, yes.

Q. Take all the time you desire now, Captain,

(Testimony of William Matson.)

whether it is a day off or a day on. I would like you to go through the bill now in our presence. So far as the time is concerned we might as well take it here as anywhere else.

Mr. McCLANAHAN.—I object to the witness being asked to undertake a job of that kind. In the first place, it is not to be expected that a man could remember—if Captain Matson has not seen that bill since he first received it—that he could remember the objections he raised to the bill at that time. I object to any such requirement of the witness at this time.

Mr. FRANK.—That is a legal objection, is it, Mr. McClanahan.

Mr. McCLANAHAN.—I hope it is; the Court can pass upon that.

Mr. FRANK.—We think we have a perfect right to ask the witness to go over the bill and indicate what he found to be wrong.

Mr. McCLANAHAN.—And I raise the further objection that the witness has not said he could do it at this time.

Mr. FRANK.—That might be evidence that there was nothing wrong with it.

Mr. McCLANAHAN.—You are welcome to that evidence.

Mr. FRANK.—I still insist upon you giving me an answer to my question. You can at least attempt it, Captain. The bill is there before you. There are the items in detail, and if you [1493—1406] had any objection to those items then you would

(Testimony of William Matson.)

know it now just as well as you do it then.

Mr. McCLANAHAN.—I object to that as an assumption on the part of counsel.

Mr. FRANK.—The objection does not make any difference, Captain. That is for the Court afterwards. Go on, Captain.

A. I am not going through that bill unless I have the original bill and sit down and go through the whole of it. I objected to the whole business pretty near.

Q. What is that?

A. As a bill I objected to the bill because it was incorrect.

Q. I am trying to find out in what respects it is incorrect.

A. Mr. Frank, you know very well that no man can carry this in his mind. This whole thing will require lots of time. It will require the original bill to check off what should not be there and what should be there. I am telling you now that I could not do that offhanded.

Q. What is there on the original bill that was presented to you that is not on this bill here and that would aid you in that work?

A. Mr. Frank, the contract was \$11,749; look at the items of that.

Q. Was that the only thing you did to check up the bill when you made your objection and determined to resist the payment of it?

A. The bill was too big.

Q. I am asking you now was that the only reason

(Testimony of William Matson.)

that you determined that the bill was too big?

A. Well, that is a good reason, is it not?

Q. That is not an answer, Captain. Was that the only reason at that time?

A. I think I would like to refuse to answer those questions unless I get a chance to get down to [1494—1407] it in detail. I have not got it by heart. In fact, I have not seen the bill since that time when I turned it over to Brobeck, and I never thought about it.

Q. I am asking you now the simple question if—

A. (Intg.) Yes, I know what you are trying to get after, and I refuse to answer. You give me time to get the original bill and sit down and look at it.

Q. Will you answer my direct question, Captain? All I want to know from you now is whether or not the reason you have stated was the only reason you objected to that bill. That is not a matter that you have to consult any papers on.

A. I refuse to answer the question.

Q. You refuse to answer the question?

A. Yes, because I want the original bill and a chance to sit down to go over it. I don't want you to trip me up on something.

Q. Well, I am not trying to trip you up.

A. Yes, you are trying to. There is no living man on earth who knows that by heart, who only saw it once or twice in his office, and went over it, and then two years afterwards to tell you everything that is in that bill.

Q. I am not asking you that. You say you ob-

(Testimony of William Matson.)

jected to it because you thought you had a contract—

A. (Intg.) I did not think so. I had one.

Q. A contract for \$11,000 odd, and here is a bill for \$33,000. Now, I am asking you if that is the only reason you objected to the payment of that bill.

A. Well, of course, the bill could not be right—

Mr. McCLANAHAN.—Just a moment, Captain. I object to the question upon the ground that it is immaterial, whether that was [1495—1408] his only reason or not. That was a sufficient reason.

Mr. FRANK.—Q. Did you check up that bill at all? A. I refuse to answer you.

Q. You refuse to answer me whether you checked up the bill or not?

A. Of course I checked up the bill and looked it over and in my opinion it was wrong.

Q. What did you check it up with?

A. I refuse to answer a ridiculous question like that. I had a contract there you know that I went by. Everybody knows what I should check it up by.

Q. Is that what you checked up by, against the contract, is that all? A. Is not that enough?

Q. I am simply asking you, Captain. I am not arguing it with you. A. Well, all right.

Q. What did you do with reports of your engineer?

A. What report—that report (pointing)?

Q. No, you had another report from Mr. Putzar, did you not?

A. I didn't know what came out of it. I suppose that is what the book is made up from.

(Testimony of William Matson.)

Q. Where is the other report? A. I don't know.

Q. Did you turn it over to your counsel?

A. I don't know whether I did or not. It is in the office, I suppose. I could not tell you.

Mr. FRANK.—(Addressing Mr. McClanahan.) Have you got that report, Mr. McClanahan?

Mr. McCLANAHAN.—Do you want me to produce it?

Mr. FRANK.—I would like to see it.

Mr. McCLANAHAN.—Do you want me to produce it?

Mr. FRANK.—I ask you to produce it for my inspection.

Mr. McCLANAHAN.—Q. Is that the report, Captain, that you refer to? A. Yes. [1496—1409]

Mr. McCLANAHAN.—I hand the counsel a letter dated January 11, 1910, addressed to the Matson Navigation Company and signed by E. L. Putzar, with attached documents, for inspection. (Handing.)

Mr. FRANK.—This is too long for me to go through critically at this sitting.

Mr. McCLANAHAN.—Introduce it, Mr. Frank.

Mr. FRANK.—No, I won't introduce it in evidence unless it is material and I have an opportunity to go over it; I should like to have it again, Mr. McClanahan, at my leisure. Do not put it away, because I would like to have it for the purpose of looking over it and examining it.

Q. Captain, after you got that report from Mr.

(Testimony of William Matson.)

Putzar did you check up the bill with reference to that report?

A. I glanced over it and saw it was not what I was looking for.

Q. So you did not pay any attention to the report?

A. No.

Q. What was it you were looking for that is not contained in the report?

A. As I told you before lunch, I was looking for a time-book that he would put the men down that were working in the morning, and check them up at night, from day to day. I was not looking for a report that was made up, I wanted that time-book which the man that keeps time generally carries with him, so that I could check up the time and see what had been done.

Q. You did not think of looking to the time-sheets that were handed in to you for that purpose, did you?

A. I wanted the time-book.

Q. What did you want to check up the time for if as you said a few minutes ago you objected to the bill because you had a contract for \$11,000 and the bill stood for \$33,000? [1497—1410]

A. Because I was going to have a reduction there of a couple of thousand dollars, and I wanted to know what they had been doing; not alone getting a reduction but I had more than twice the amount of money spent.

Q. That was it, was it? What were you to get a reduction for?

A. Taking out the crank-shaft—if they did not

(Testimony of William Matson.)

take it out I was to get a reduction.

Q. That was the only thing? A. Yes.

Q. You spoke this morning, Captain, of having made a contract for the smokestack? A. Yes.

Q. And also of having made a contract for the tank-top? A. Yes.

Q. It was not a contract for the tank-top, you exhibited here a bid which you rejected; is that right?

A. Yes.

Q. Were there any other, what we might call minor contracts made for that ship?

A. There were only those two. That contract was made at \$1250, and a guarantee that he would do it within those figures and that the ship would not be delayed by that.

Q. And the smokestack contract?

A. The smokestack the same way, \$900, to take it out and put it in, and the ship was not to be delayed.

Q. And no other part of the work performed on that ship at that time, which was outside of the original specifications, was contracted for at any figure; is that your understanding?

A. Not that I remember; not with me.

Q. Could it have been done with somebody else?

A. It should not have been.

Q. It should not have been contracted for?

A. Except some minor small changes. I told you about the patch on the condenser this morning which the chief engineer had [1498—1411] spoke to me about and said it would be less money and thought it would be all right to put that patch on.

(Testimony of William Matson.)

Q. And none other of the work which was done on that ship at that time was, according to your understanding, contracted for at an agreed figure?

Mr. McCLANAHAN.—I object to that. The witness has not said that. He said not with him.

Mr. FRANK.—Yes, and he has said more than that Mr. McClanahan.

Mr. McCLANAHAN.—Well, I refer to the record.

Mr. FRANK.—Well, we will let the witness straighten it out; you do not need to interfere with it.

Q. Is that the fact, Captain, as I have asked you? Just read the question to the witness, Mr. Reporter.

(Question read to the Reporter.)

Mr. McCLANAHAN.—I object to the question, further, upon the ground that the witness has expressly claimed that the principal work done on the ship was under a contract for \$11,749.

Mr. FRANK.—Well, you are not improving it any, Mr. McClanahan. Now, go on, Captain.

A. Well, that was the contract in the first place, \$11,749, and the \$1250 for the tank-top and \$900 for the smokestack which he agreed to take out and put in again in the same ship.

Q. Is that all? A. That is all I remember.

Q. Let me see whether I can help you to remember. We have here certain schedules which are admitted as correct, with the exception of two of them, which are admitted except that as to certain items the amounts are not admitted. I will ask you, showing you "Schedule No. 4" whether or not these several

(Testimony of William Matson.)

matters were agreed upon for a fixed price. [1499—1412]

Mr. McCLANAHAN.—I will ask you, Mr. Frank, if you mean by “admitted” admitted by the pleadings?

Mr. FRANK.—Yes, admitted by the pleadings.

A. That is a pretty hard proposition to state.

Mr. McCLANAHAN.—Not that one, Captain, the other one.

A. The spring-bearings—I remember there was something said about spring-bearings, but I cannot recollect how the Chief Engineer happened to tell me something. If Klitgaard ordered that done I guess it was all right.

Mr. FRANK.—Q. That is “Schedule No. 4.” Now, I show you “Schedule No. 5” and ask you if anybody agreed to that?

A. That was never put up to me.

Q. It was never put up to you? A. No.

Mr. McCLANAHAN.—Mr. Frank, what is the materiality of this examination if we have admitted in our answer that those contracts are correct?

Mr. FRANK.—I will develop the materiality afterwards.

Q. Now, I show you “Schedule No. 6” and ask you who agreed to that?

A. I don’t know anything about that.

Q. Now, I show you “Schedule No. 7” and ask you who agreed to that.

A. I don’t remember anything about that. The trouble with this is, you know you have to take the

(Testimony of William Matson.)

specifications and go through them. It may be that Klitgaard said something to me but I don't remember anything about it.

Q. I show you "Schedule No. 8" and ask you who agreed to that. A. I don't know.

Q. I show you "Schedule No. 9" and ask you who agreed to that.

A. I agreed to that myself, the \$900, but I did not agree to the extras.

Q. You did not agree to the extras? A. No.

Q. You do not know who did? [1500—1413]

A. No, I don't think anybody did, Mr. Frank.

Q. Well, that is your think, Captain.

A. Well, I know.

Q. How do you know?

A. Because nobody could. I made a contract there with him to take that out and put the smokestack in in place and in good order and ready to go to sea and to take no time of the 25 days while she was to be in the dock or in the shipyard.

Q. You did that, you said, in the presence of Mr. Klitgaard? A. I did.

Q. And he understood what the agreement was, did he not? A. He heard the conversation.

Q. Now, I will show you "Schedule No. 10" and ask you who agreed to that.

Mr. McCLANAHAN.—I object to all these questions as immaterial under the pleadings.

A. I see you get the owners in on the bill anyway. I do not know.

Mr. FRANK.—Q. Well, at any rate, you yourself

(Testimony of William Matson.)

did not make those agreements, did you? A. No.

Q. You have spoken about "Respondent Matson Exhibit No. 1" as having been an agreement; you rejected the bid, did you not?

A. I did not reject it. I told him I would accept his bid with the understanding that if it could be done for less money I was to get credit for it.

Q. Who wrote that word "rejected" on there?

A. I do not know.

Q. Just look at it and see if you recognize the handwriting (handing)? A. No.

Q. Do you know, as a matter of fact, Captain, that a great deal more work was done on that tank than is mentioned here [1501—1414] in this letter and that the work was entirely different from what is mentioned in this double-bottomed tank?

A. I did not know it.

Q. You did not know it? A. No.

Q. You did not check that up with Mr. Putzar or anybody else's report, did you?

A. No, because I felt that his report was so conflicting that I could not get at what I wanted to get at.

Q. Whose report was conflicting?

A. I mean the time kept on the different jobs.

Q. The time kept on the different jobs was conflicting with what? A. With that contract.

Q. In what way?

A. It was not segregated enough. I expected, Mr. Frank, that that tank-top would be finished within the \$1250, as he agreed to do it.

Q. You did not know, then, as a matter of fact,

(Testimony of William Matson.)

that it was impossible to do the work as specified in this letter after the matter was torn up, did you, on account of the bad condition of the rest of the tank-top?

Mr. McCLANAHAN.—I object to the question upon the ground that there is no evidence to support the statement.

Mr. FRANK.—Q. Is that the fact, Captain?

A. I do not remember it.

Q. Now, as a matter of fact, Captain, you never looked in to any of these reports or any of these matters to ascertain what work was done and what work was not done on that ship, did you?

A. I did look through the bills and found there was more charged than they had any right to charge.

Q. That is not an answer to my question, Captain. I am asking you about the work done; you never examined any of the reports or made any effort to find out whether the work which is specified in the bill was actually done on the vessel? [1502—1415]

A. I am not an expert and I do not want to say.

Q. Then you did not do it, did you, not being an expert?

A. I told you I looked over the bills and looked over the contract. The bills that came from the United Engineering Works were so in excess of what the man agreed to do, there was no chance to ratify them.

Q. Then, as a matter of fact, you do not know today what work was done on that vessel?

(Testimony of William Matson.)

A. Yes, I do know all the work that was done on that ship.

Q. When did you find it out?

A. I found it out as soon as she was afloat.

Q. As soon as she was afloat?

A. Yes, after she came back from the Islands and when I came back from the east.

Q. How did you find out?

A. Well, I can find it out by going down on the ship and looking, could I not? And I would have been glad to have you along with me.

Q. That is the only way you informed yourself, by going down there and looking?

A. That is the only way to find out.

Q. I say that is the only way you informed yourself, is it? A. And looking at the bills.

Q. You never informed yourself through the reports of any engineers, or anybody else?

A. I only had that time report; that is all I had.

Q. You did not have Klitgaard's report?

A. No.

Q. And you did not speak to Klitgaard about it?

A. No, and I have not asked him about it to-day, that I can remember.

Q. Did you ask Saunders?

A. I probably spoke to him about it. [1503—1416]

Q. You say "probably"; do you remember having spoken to him about it?

A. It is natural I would talk to him about it.

Q. But you have not any recollection now of any conversation with him on the subject?

(Testimony of William Matson.)

A. Not the dates, but I talked to him several times. You don't suppose for a minute that I would refuse to pay the bill unless I had some conversation about it and looked over some bills, do you?

Q. Did Captain Saunders purport to know the details of the work that was done on the ship?

A. No. I think we went through the bills together or he reported a bill to me; I don't know if he reported the details.

Q. But that is all, you and he went through the bills together—is that it?

A. What else could we go through?

Q. I am not answering the questions, Captain.

A. Then I refuse to answer you.

Q. Very well. Now, Captain, there were further bids, were there not, at the time these first specifications were bid upon? A. Yes.

Q. What other companies bid?

A. The Union Iron Works.

Q. What other?

A. I think the Risdon, if I am not mistaken.

Q. Have you those bids now?

A. I don't know whether I have or not. I think they probably will be in their office, at least the Union Iron Works. I don't know if the other has.

Q. Don't you keep copies of those?

Mr. McCLANAHAN.—We have those, Mr. Frank. Do you wish to see them?

Mr. FRANK.—Yes.

The WITNESS.—I don't carry them in my vest pocket, you know, Mr. Frank.

(Testimony of William Matson.)

Mr. FRANK.—Captain, there is no profit in that kind of [1504—1417] talk or banter.

Mr. McCLANAHAN.—Mr. Frank, I object to your lecturing the witness.

Mr. FRANK.—We are just trying to get at this thing, Captain, in a reasonable sort of way, by question and answer.

The WITNESS.—Well, go ahead then.

Mr. McCLANAHAN.—I will get them for you later on, Mr. Frank. I do not think I can put my hand on them now.

Mr. FRANK.—I will wait a few moments. I would like to finish with that before I take up another subject.

Mr. McCLANAHAN.—Probably by mistake, Mr. Frank, they have been mixed up with some other files. I cannot put my hands on them now. If they cannot be found we will get copies of them. I remember very distinctly seeing them. Here are two copies of them. The Union Iron Works bid twice. Here is the second bid (handing).

Mr. FRANK.—Q. Now, Captain, do you remember the machinists' strike here in San Francisco just preceding the time when this work was done?

A. No, I do not remember it.

Q. You do not remember it? A. No.

Q. Did you not know there was a strike here?

A. I heard about it; yes. I don't remember much about it but I know there was a strike, or was to be one; I don't know whether there was one or not—yes, there was one, but whether it was at the time of

(Testimony of William Matson.)

the fixing of the ship or not I do not remember.

Q. You were connected with that, were you not, in the way of a committee on behalf of the employers?

A. I think you have the cart before the horse.

Q. Well, then, put the horse in his proper place.
[1505—1418]

A. I was connected last summer with that. Last summer was the first time I was ever connected with the conciliation movement.

Q. But you knew there was a strike previous to that in which the machinists prevailed?

A. A good many years ago.

Q. No, just a short time previous to August, 1909.

Mr. McCLANAHAN.—I object to that question upon the ground that there is no evidence of any strike just previous to August, 1909.

A. I do not remember what that strike was; I could not tell you.

Mr. FRANK.—Q. Well, at any rate, it was previous to this “Hilonian” job?

A. I don’t remember that even.

Q. You do not? A. No.

Q. You know there was a strike in which there was an increased wage given to the machinists, was there not?

A. That was a good many years ago, wasn’t it?

Q. Well, say 3, 4 or 5 years.

A. I don’t know anything about what was done.

Q. Where is Mr. Klitgaard now, Captain?

A. I don’t know.

Q. You don’t know? A. No.

(Testimony of William Matson.)

Q. Are you paying any personal attention to this case at all, Captain? A. No, I have not so far.

Q. Nothing at all?

A. No. I have had a good deal to do with it since I got before you though; I wish I had taken and studied it up a little.

Q. It is all in the hands of Mr. Diericx, is it?

A. He has been looking out for it.

Q. He has been looking for it ever since he came into your employ?

A. Yes, he handled the bills and looked into the [1506—1419] different things.

Q. I understood you this morning to say that Klitgaard had suggested to you that the crank-shaft was all right, before you made the contract?

A. He thought that it might be all right.

Q. Before you made the contract, what you call the contract with the United Engineering Works?

Mr. McCLANAHAN.—The question has been answered.

Mr. FRANK.—I do not think so. Just answer the question, Captain.

A. Well, Mr. Frank, I answered this morning and I told you he thought that it might not have to come out. Christy went out with Captain Saunders to look at the shaft when the ship came in, and he also reported that he thought that the shaft looked all right.

Q. That was before these conversations with Mr. Gray?

A. You mean before the contract with him?

(Testimony of William Matson.)

Q. Yes. A. Gray thought it had to come out.

Q. That was before—

A. (Intg.) Before the contract was let, you mean?

Q. Yes. A. Yes.

Q. You say Christy reported; to whom did he report? A. To me.

Q. To you personally?

A. Yes. Who else would he report to?

Q. I am sure I don't know, Captain. I just wanted to know who you thought he reported to; that is all. Now, will you relate again with reference to the crank-shaft just exactly what was said by you and Mr. Gray?

Mr. McCLANAHAN.—I object to that as unnecessary repetition. He has already related it in his direct examination and in his cross-examination.

Mr. FRANK.—Q. Go on, Captain. [1507—1420]

A. What was said when I gave the contract was that I was to put on a timekeeper there, and we were to get the benefit of a couple of thousand dollars if the crank-shaft did not come out.

Q. What did he say? Did he use the words “a couple of thousand dollars”?

A. Yes, about that.

Q. What? A. About that, he said.

Q. About that?

A. Yes. I cannot remember exactly the words spoken anyway, it is a long time ago.

Q. Then you do not want us to understand that he made an agreement to give you a couple of thousand dollars if the crank-shaft did not come out?

(Testimony of William Matson.)

A. Yes, I do.

Q. Oh, that is what you mean, now, is it?

A. Yes.

Q. By "a couple" what do you mean?

A. \$2,000.

Q. What did you put the timekeeper on for if you were to get absolutely \$2,000?

A. I tried to explain that to you this morning, Mr. Frank, and you are now trying to go over the same ground to see if I will jump the track or not.

Q. No, Captain.

A. That is just what you're after. I put the timekeeper on there to see that we would get what belonged to us.

Q. And what was that? A. \$2,000.

Q. Then what instructions did you give Mr. Putzar when he went over there?

A. To keep time on everything.

Q. And that is all you said to him?

A. That is all that I remember.

Q. You have been doing business also with the Union Iron Works, Captain, have you not?

A. Yes.

Q. Have you in your possession any bills rendered by the Union Iron Works during the past two years?
[1508—1421]

Mr. McCLANAHAN.—I object to that as immaterial.

A. I think we have bills in the office.

Mr. FRANK.—Q. Well, will you produce those?

Mr. McCLANAHAN.—I instruct the witness not

(Testimony of William Matson.)

to produce them until ordered to do so by the Court unless you can show me the materiality, Mr. Frank.

Mr. FRANK.—I guess that is all, then.

Redirect Examination.

Mr. McCLANAHAN.—Q. Captain, has the Matson Navigation Company ever tendered to the United Engineering Works a check that covered the contract price which was agreed to be paid under the original bid? A. I believe we have.

Q. Do you remember when the check was tendered?

A. I do not remember the date. I think I was east at the time.

Mr. FRANK.—Q. If you were east then, Captain, how do you know?

Mr. McCLANAHAN.—Just wait a minute, Mr. Frank.

Mr. FRANK.—I am objecting.

Mr. McCLANAHAN.—Well, you are not to address the witness.

Mr. FRANK.—I move to strike it out as hearsay.

Mr. McCLANAHAN.—Q. Do you not know, Captain, that that check was made out and tendered?

A. Yes, I do.

Mr. FRANK.—I will have the privilege of examining him on that point.

Mr. McCLANAHAN.—You will after I have finished my direct examination, Mr. Frank.

Mr. FRANK.—Very well.

Mr. McCLANAHAN.—Q. Captain Matson, I hand you a letter dated “December 9, 1909,” and

(Testimony of William Matson.)

ask you if you can identify it (handing).

A. Yes. [1509—1422]

Q. At the date of that letter, December 9, 1909—

A. (Intg.) I think it was handed to me sometime just when I got back from the east.

Q. Had you received Mr. Putzar's report which was submitted to Mr. Frank for examination, dated January, 1911? A. No, I had not. [1510—1422½]

Q. You read this letter, did you, Captain?

A. Yes, sir.

Mr. McCLANAHAN.—I offer in evidence the letter identified by the witness dated December 9th, 1909, addressed to the Matson Navigation Company, and signed by United Engineering Works, per Sam J. Eva, Pres., and ask that it be marked Respondent's Matson Exhibit No. 2.

(The letter is marked "Respondent's Matson Exhibit No. 2" and is as follows:)

[Respondent's Matson Exhibit No. 2.]

"San Francisco, Cal., December 9th, 1909.

Matson Navigation Company

268 Market Street,

San Francisco, Cal.

Attention of Captain Wm. Matson.

Gentlemen:

Enclosed please find statement for work performed on your Str. 'Hilonian' for which we would be pleased to receive a check on or before the 11th inst. If you are not prepared to pay this amount

(Testimony of William Matson.)

within the time specified, you will kindly let us know your reasons for not paying same.

Yours truly,

UNITED ENGINEERING WORKS,

Per SAM J. EVA, Pres."

Q. I hand you another letter, Captain, and ask you if you can identify that letter (handing).

A. Yes, sir, I remember that letter.

Q. It was received in the regular course of mail, was it?

A. Yes, sir. I think I asked for an itemized statement.

Mr. McCLANAHAN.—I offer in evidence the letter identified by the witness dated December 11th, 1909, addressed to the Matson Navigation Company, and signed United Engineering Works, by Sam. [1511—1423] J. Eva, Pres., and ask that it be marked Respondent's Matson Exhibit No. 3.

(The letter is marked "Respondent's Matson Exhibit No. 3," and is as follows:)

[Respondent's Matson Exhibit No. 3.]

"San Francisco, Cal., December 11th, 1909.

Matson Navigation Company,

268 Market Street,

San Francisco, Cal.

Attention of Captain Wm. Matson.

Gentlemen:

The writer has tried several times to get you by phone, to ascertain what is your final decision regarding the payment of bills rendered for work per-

(Testimony of William Matson.)

formed on your Str. 'Hilonian,' so we write you to inform you that we have instructed Mr. Frank, who will represent us in this case, to take such steps to protect our interests and proceed to collect the several bills as rendered.

Yours very truly,

UNITED ENGINEERING WORKS,

Per SAM. J. EVA, Pres."

Q. Calling your attention, Captain, to the letter just introduced in evidence, I will ask you whether or no this conversation which you had with Mr. Frank, which has been referred to, was after the receipt of that letter.

A. I could not remember that.

Q. You could not remember that? A. No, sir.

Q. Referring again to that letter, I will ask you whether or not at the date of the receipt by you of this report of Putzar's dated January 11th, 1910, this matter was then to your knowledge in the hands of attorneys.

A. Excuse me; I want to look at this letter. You say the letter of January 11th? [1512—1424]

Q. Read the question, Mr. Reporter.

(The Reporter reads the question.)

A. As far as I remember, yes.

Q. Had Mr. Putzar prior to the receipt by you of his report of January 11th, 1910, been requested to make a report of that character?

A. Yes, sir; I requested Captain Saunders to tell him to get his report in right away.

Q. What was that report to consist of?

(Testimony of William Matson.)

A. Of his time.

Q. Will you please inspect of Mr. Putzar accompanying the letter of January 11th, 1910, and state whether or not he was ever requested to make such a report as that.

A. I can tell you that without looking at it over again, because I have looked at it; no. I wanted the time that he was put there to take from the men.

Q. Then the report of January 11th, 1910, was a voluntary report on the part of Mr. Putzar?

Mr. FRANK.—You can draw your own conclusions as to that from the evidence.

A. As far as I know, it was. I did not ask for that.

Mr. McCLANAHAN.—Q. While we are on the subject of Mr. Putzar you stated in your cross-examination that Mr. Samuels said that he was all right. I will ask you did you find Mr. Putzar to be all right as a timekeeper on the “Hilonian” job?

A. Well—have I got to answer that?

Q. Yes. A. I don't want to.

Q. Well, answer it.

A. I don't think he was all right.

Q. Did you know at any time how Putzar was keeping time on that job? A. No, I did not.

Q. Did you know at any time what form his report on the time to be kept on the job was to take?

A. No, sir, I did not. I expected him [1513—1425] just to keep the time of the men as they were working.

Q. You had no knowledge at any time that he was

(Testimony of William Matson.)

keeping this time-book which has been introduced as
“Respondent’s Curtis No. 4”?

A. No, sir, I never did.

Q. You did not know at any time that he was keeping time on the ship alone?

Mr. FRANK.—I object to this leading. You are testifying in this matter, Mr. McClanahan.

Mr. McCLANAHAN.—Q. Answer the question.

A. I have told you no.

Q. You said, Captain, in answer to a question propounded by Mr. Frank that the first time the subject of the crank-shaft came up was at this hearing, and this morning in your direct examination you said that the subject of the crank-shaft had been discussed between you and Mr. Christy, and between you and Mr. Klitgaard and you and Mr. Gray. Can you explain your statement on your cross-examination?

A. I thought I always said the same proposition, that it had been discussed. Christy went out on the bay to look at the shaft as the steamer came in, and he thought the shaft was all right. Mr. Gray did not think it was right. Klitgaard thought it was right.

Q. Mr. Christy’s report or statement to you about the shaft was made before the bid was let, was it not?

A. I think so.

Mr. FRANK.—Do you consider that a proper way to examine the witness, Mr. McClanahan? If you do, I am powerless to stop you.

Mr. McCLANAHAN.—You are not powerless to make a proper legal objection.

(Testimony of William Matson.)

Mr. FRANK.—Legal objections seem to be of no avail.

Mr. McCLANAHAN.—Ditto with you, as the record in this case will show. [1514—1426]

Q. Captain, you also said on your cross-examination that on several visits made to the ship you met none of the officials of the United Engineering Works.

A. I was over there several times when I did not meet anybody. I was also there the last time, when I made that contract for the smokestack. I did meet Mr. Gray there then.

Q. You have stated on cross-examination that the only thing you wanted time for was on the crank-shaft, and in your direct examination this morning you stated that there was an agreement that time should be kept on the tank-top work. A. Yes, sir.

Q. Which is correct?

A. This morning is correct. I must have made some error.

Mr. McCLANAHAN.—I think that is all.

Recross-examination.

Mr. FRANK.—Q. Mr. Matson, you have spoken about tendering \$11,750. You said you were not here at that time. How do you know that such an amount was tendered?

A. I think by telegraphs. I am not sure.

Q. By telegraphs? A. Yes, sir.

Q. That is, somebody telegraphed to you?

A. Telegraphed to me when I was in the east that they wanted money.

(Testimony of William Matson.)

Q. That who wanted money?

A. The United Engineering Company.

Q. What did you reply?

A. I told them to pay what we thought we owed them, the contract price, and we had several small contracts that were added in that.

Q. That is all you know about what was tendered to them? A. Yes, sir.

Q. So, of your own knowledge, you do not know anything about it at all? A. I see the check.

Q. Where is the check?

A. I think the check is in the office. [1515—1427]

Q. Just kindly produce that to-morrow morning. We expect you to be here to-morrow morning and to produce that check. I will make a memorandum of it while I think of it. A. I will produce it.

Q. I don't want to forget it.

A. You will get it all right.

Q. Now, you have introduced in evidence here two letters, December 9th, 1909, and December 11th, 1909, and in the one of December 11th, 1909, you are advised that the United Engineering Works had instructed me to represent them in this case.

A. In one of the letters.

Q. Now, of course, it was long before you got that letter when you spoke to me, was it not?

A. I don't remember, Mr. Frank.

Q. It must have been, must it not, Captain?

A. I would not say.

Q. You would not have asked me to represent you in this case if you had in your possession a letter

(Testimony of William Matson.)

telling you that I was representing the other side, would you?

A. It don't look like it; at the same time I don't know how many days before that letter I did ask you.

Q. It was, then, before that letter some time?

A. Sure, or at least I think it was.

Q. You don't wish us to understand, Captain, that the enclosing of the statement with the letter of September 9th was the first statement that you had of the bill and demand in this case?

A. I don't know how many days there were; there were not very many days before that letter was written that the bill was produced. I don't remember; I have not got it in my head. Probably you can find the original bill, and I will give you the date that the bills were sent in. [1516—1428]

Q. Was not the date the bills were sent in the date which this bill bears here, of September 27th?

A. I don't remember.

Q. You would not undertake to say it was not?

A. I don't remember.

Q. You would not undertake to say it was not?

A. I refuse to answer.

Q. Don't you know as a matter of fact—let me ask you another question before we come to that. It has been your practice, has it not, in your transactions with this company to pay your bills sixty days *after presented*? A. Sooner than that.

Q. What length of time?

A. I could not tell you.

(Testimony of William Matson.)

Q. Could you not tell me if it was sooner than 60 days?

A. I often gave them money in thirty days, or less time; when they needed it. I don't carry that on a memorandum, Mr. Frank.

Q. I am simply asking you not for the exception but for the rule.

A. As a rule we generally pay bills in thirty days.

Q. Now, do you remember a check that was given to the United Engineering Works on November 24th, which included \$11,700 odd and all of certain minor contracts?

A. It amounted to something around \$15,000 or \$16,000.

Q. I don't remember the exact amount, but do you remember the bill of that sort on November 24th?

A. I thought you just asked me for that check to-morrow morning.

Q. That is the check that you referred to?

A. Yes, sir.

Q. At the time that check was issued you had already had the bill, did you not, from the company?

A. I suppose so.

Q. And had had it at least thirty days?

A. I don't know.

Q. You will produce that then to-morrow morning? A. Sure I will. [1517—1429]

Q. And we will go on to-morrow morning and finish it up.

Mr. McCLANAHAN.—I am satisfied that Captain Matson cannot produce that check.

(Testimony of William Matson.)

The WITNESS.—I really thought I could.

(A conversation ensues between the witness and counsel, in which he produces a telegram.)

Mr. FRANK.—Q. This telegram, then, is a telegram which you received from Mr. Gregg, the secretary of your company, on the date it bears; is that right? (Handing.) A. I guess so.

Mr. FRANK.—We ask that that telegram be put in evidence and marked Matson Exhibit No. 4.

(The telegram is marked “Matson Exhibit No. 4” and is as follows:)

[Matson Exhibit No. 4.]

“WESTERN UNION TELEGRAPH COMPANY.

November 26, 1909.

Captain Wm. Matson,

Hotel Belmont,

New York City, N. Y.

I made check United Engineering Works Fifteen Thousand Five hundred dollars Contract ‘Hilonian’ and sundry bills ordered. They refused accept same unless shown on account which I would not do.

HARRY B. GREGG.”

Q. Now, Captain, with respect to the request made of Mr. Putzar for his report, all that you know about it is that you asked Captain Saunders to ask him for a report; is that right?

Mr. McCLANAHAN.—I object to that. It has already been gone over on cross-examination, and you have ended your cross-examination and I have ended my redirect and you have ended your [1518—

(Testimony of William Matson.)

1430] recross-examination. This is not proper at this time.

Mr. FRANK.—Q. Answer the question, Mr. Matson.

A. I instructed Captain Saunders to tell him what I wanted. I wanted the report of his time-book sent in to the office.

Mr. FRANK.—That is all.

The WITNESS.—You understand, then, that I cannot produce that check.

Mr. FRANK.—Yes, that is settled.

(An adjournment is here taken until to-morrow, Tuesday, October 31st, 1911, at 10 A. M.) [1519—1431]

Tuesday, October 31st, 1911.

[Testimony of Charles W. Saunders, for Respondent.]

CHARLES W. SAUNDERS, called for the respondent, sworn.

Mr. McCLANAHAN.—Mr. Frank, we have discovered the original bids of the Union Iron Works and the Risdon Iron Works called for by you yesterday, and now submit them to you for your inspection.

Mr. FRANK.—All right.

Mr. McCLANAHAN.—We offer them in evidence.

Mr. FRANK.—We object to them being offered in evidence upon the ground that they are irrelevant and immaterial. The fact that I called for an inspec-

(Testimony of Charles W. Saunders.)

tion of them does not entitle you to offer them in evidence.

Mr. McCLANAHAN.—We offer in evidence a letter from the Union Iron Works, dated July 27th, 1909, addressed to the Matson Navigation Company, signed “Union Iron Works Company by George A. Armes,” and ask that it be marked Respondent Matson Exhibit No. 5.

(The letter was marked “Respondent Matson Exhibit No. 5” and is as follows:)

[Respondent Matson Exhibit No. 5.]

“UNION IRON WORKS CO.

San Francisco, July 27th, 1909.

Matson Navigation Company,

San Francisco, Cal.

Gentlemen:—

Replying to your inquiry we offer to make all repairs on your ‘Hilonian’ as per specifications submitted under date of July 22nd, for the sum of \$12,600. We can make these repairs in the time contemplated, 26 days. [1520—1432]

It is further understood that should we be awarded the contract repairs are to be made alongside of wharf at our works.

Trusting that this will meet with your approval and we may receive your valued order, we remain,

Yours truly,

UNION IRON WORKS COMPANY,

By GEO. A. ARMES,

Engineer in Chief.”

(Testimony of Charles W. Saunders.)

And also letter from the Union Iron Works, dated August 9th, 1909, addressed to the Matson Navigation Company, signed Union Iron Works Company, by Geo. A. Armes, Engineer in Chief, and ask that it be marked Respondent Matson Exhibit No. 6.

(The letter is marked "Respondent Matson Exhibit No. 6," and is as follows:)

[Respondent Matson Exhibit No. 6.]

"UNION IRON WORKS CO.

San Francisco, August 9th, 1909.

Matson Navigation Company,

268 Market Street, San Francisco.

Attention Captain Matson.

Gentlemen:—

Replying to your verbal inquiry and supplementing our bid of July 27th, we offer to make repairs to your "S.S. Hilonian" as per specifications submitted for the sum of Twelve thousand five hundred dollars (\$12,500). This price includes the necessary overtime to complete repairs within the time specified.

Trusting this will meet with your approval,

Yours very truly,

UNION IRON WORKS CO.

By **GEO. A. ARMES,**

Engineer in Chief." [1521—1433]

Mr. FRANK.—I should like to know how you deem these letters material, Mr. McClanahan?

Mr. McCLANAHAN.—Wait until I get them in.

Mr. FRANK.—I am objecting to them.

(Testimony of Charles W. Saunders.)

Mr. McCLANAHAN.—I understand that, and the objection is of record, as I understand.

Also letter from the Risdon Iron & Locomotive Works, dated July 30th, 1909, addressed to the Matson Navigation Company, signed “Risdon Iron & Locomotive Works, by W. H. Taylor, Jr.” and ask that it be marked Respondent Matson Exhibit No. 7.

(The letter is marked “Respondent Matson Exhibit No. 7,” and is as follows:)

[Respondent Matson Exhibit No. 7.]

“RISDON IRON & LOCOMOTIVE WORKS,
San Francisco, July 30th, 1909.

Matson Navigation Company,

268 Market Street, San Francisco.

Gentlemen:—We offer to do repairs to the Steamship ‘Hilonian’ in accordance with your specifications, for the sum of Thirteen thousand five hundred forty-two dollars (\$13,542.)

We could complete the work inside of time specified.

Trusting that we may receive your valued order, we are,

Yours truly,

RISDON IRON & LOCOMOTIVE WORKS,

By W. H. TAYLOR, Jr.,

Vice-President.”

Mr. FRANK.—Now, what is your reply, Mr. McClanahan?

Mr. McCLANAHAN.—They are matters on which Captain Matson was examined by you and were called for by you, and at the time we could only pro-

(Testimony of Charles W. Saunders.)

duce copies. We now produce the originals.
[1522—1434] After you have inspected the same we claim the right to offer them in evidence.

Mr. FRANK.—In the first place, Captain Matson was never examined on them at all. On direct examination he testified as to having received bids from several companies. It is true that I called for an inspection of them but that does not entitle you to introduce them in evidence. I object to them as incompetent and immaterial.

Mr. McCLANAHAN.—You recognize, Mr. Frank, that if they had contained anything helpful to your case you would have offered them in evidence?

Mr. FRANK.—I do not know, Mr. McClanahan, whether I would have been permitted to have done it if I had seen fit. Whether I *shall them* or not is a matter that lies entirely in my discretion.

Mr. McCLANAHAN.—Q. Captain Saunders, what is your full name?

A. Charles W. Saunders.

Q. How old are you, Captain? A. 42.

Q. What is your present business?

A. Superintendent for the Matson Navigation Company.

Q. You are a Master Mariner? A. Yes, sir.

Q. How long have you been superintendent of the Matson Navigation Company?

A. About three years and a half.

Q. What are your duties as superintendent, your present duties?

A. To supervise the general operation of the ship,

(Testimony of Charles W. Saunders.)

loading and discharging, despatch.

Q. Were your duties the same in August and September, 1909?

A. They have been the same ever since I have been with the company.

Q. Do you remember the occasion of the steamship "Hilonian" [1523—1435] prior to August, 1909, needing repairs? A. Yes, sir.

Q. What did you know about that matter?

A. The work had been considered for several months prior to the time that she did undergo repairs. There had been talk about the crank-shaft being out of shape and the ship being in need of an overhauling.

Q. Is that the extent of your knowledge?

A. That is all I knew about it up to the time that the matter was directly taken up.

Q. About what date was the matter of the repair work of the "Hilonian" directly taken up by the Matson Navigation Company?

A. On the return of the ship from Honolulu in July. I think she returned on the 27th of July, if I am not mistaken.

Q. That was the form which the matter took at that time? A. Specifications were gotten out.

Q. By whom?

A. By Mr. Klitgaard, the Chief Engineer.

Q. Would you recognize those specifications if you saw them now? A. Yes, sir.

Q. I hand you a paper and ask you if you can, after reading that over, identify it in any way.

(Testimony of Charles W. Saunders.)

A. That is a copy of the specifications.

Mr. McCLANAHAN.—We offer in evidence the paper identified by the witness and entitled “Specifications for repairs to ‘S.S. Hilonian’ ” and ask that it be marked “Respondent Saunders Exhibit No. 1.”

Mr. FRANK.—I object to it upon the ground that it does not appear that is a copy of the specifications *of the specifications* which were handed to the United Engineering Works. Every time I get a sight of another copy of these alleged [1524—1436] specifications *that* are different.

Mr. McCLANAHAN.—It will be noted, also, that all of the alleged specifications so far introduced in this case have been introduced by the libellant.

Mr. FRANK.—Hardly. That is not the fact. I have produced one, and you have produced one.

Mr. McCLANAHAN.—Q. Captain Saunders, I notice that these specifications are dated July 22d, 1909. Does that assist you at all in fixing the date approximately when they were first prepared?

A. Yes, sir; they were prepared immediately after the arrival of the steamer “Hilonian.”

Q. But you have just stated that the steamer “Hilonian” arrived on the 27th of July.

A. That was to the best of my knowledge at that time. I know that those specifications were not gotten out until the steamer arrived, and the Chief Engineer prepared them, and we had them typewritten in our office with his assistance.

Q. I call your attention to Respondent Siverson Exhibit “A” filed in this case where the closing

(Testimony of Charles W. Saunders.)

words read "Bids will be opened at noon, Tuesday, July 22nd, 1909," and call your attention to your own exhibits where the closing words read: "Bids will be opened Thursday, July 29th, 1909." Can you explain the change in the date, or do you know anything about it? If you have no memory on the matter, Captain, say so.

A. I am in doubt about that, Mr. McClanahan.

Q. You are in doubt about whether you have an explanation, you mean?

A. There is a doubt in my mind now. I think these specifications were gotten out first, and then there was a postponement for some reason.

Q. Postponement of what?

A. Postponement of the inspection [1525—1437] or the opening of bids, I forget which. It has escaped my memory.

Q. Will you please compare Respondent Siverson Exhibit "A" with your Exhibit 1, which has just been introduced in evidence and tell me, if you can, which of those two was the original set of specifications as prepared in the office of the Matson Navigation Company. I want you to compare the whole thing, Captain; it may take some time.

A. (After examination.) I don't understand that discrepancy here.

Q. That is not my question, Captain. Read the question Mr. Reporter, to the witness.

(The Reporter reads the question.)

A. I think this one was the original, and this one was the first copy until the postponement.

(Testimony of Charles W. Saunders.)

Mr. FRANK.—Q. By “this” you mean what?

Mr. McCLANAHAN.—I will clear that up Mr. Frank.

Q. By “this” you mean Siverson Exhibit “A”?

A. I think that was the first copy sent out.

Q. The first copy sent out? A. Yes, sir.

Q. Were there two copies sent out?

A. There were two lots that were typewritten evidently.

Q. Were there two copies submitted to the shops for bids?

A. There were two copies submitted to two shops.

Q. What shops were they?

A. The United and the Union.

Q. And your testimony is that Siverson Exhibit “A” is the first copy? A. Yes, sir.

Q. That was prepared? A. Yes, sir.

Q. What have you got to say about your “Exhibit 1”?

A. I have a faint recollection that there was a postponement [1526—1438] of some sort and this was got out to meet the change in dates.

Q. That is, you refer now to your Exhibit 1?

A. Yes, sir.

Q. What is there on the two exhibits, “Siverson A” and your “Exhibit 1” that brings to your recollection the matter of the change of dates?

A. I don’t think the ship was quite ready.

Q. That is not answering my question. Read the question to the witness, Mr. Reporter.

(The Reporter reads the question.)

(Testimony of Charles W. Saunders.)

A. The change in the opening of the bids.

Q. The change in the time of the opening of the bids?

A. Yes, sir, and also the change in the time for the examination of the steamer.

Q. That is, the change on your Exhibit 1 in those two respects from Siverson Exhibit "A"?

A. Yes, sir.

Q. Were those specifications as originally prepared submitted to anyone for figures?

A. Yes, sir.

Q. To whom?

A. To the United Engineering Works, the Union Iron Works and the Risdon.

Q. Were any bids made by those respective shops on that work? A. Bids were made by all three.

Q. I show you Respondent Christy Exhibit "A" and ask you if you can identify that exhibit (handing.) A. Yes, sir.

Q. What is it?

A. A bid from the United Engineering Works.

Q. On thost specifications.

A. On those specifications.

Mr. FRANK.—Q. On what specifications?

A. A set of specifications furnished them.

Mr. FRANK.—They are not identified yet.

Mr. McCLANAHAN.—I show you "Respondent Matson Exhibit 7" and ask you if you can identify that? A. Yes, sir. [1527—1439]

Q. What is that?

(Testimony of Charles W. Saunders.)

A. A bid from the Risdon Iron & Locomotive Works.

Q. For what?

A. For the work on the steamer "Hilonian" in accordance with our specifications.

Q. I show you "Respondent Matson Exhibit 5" and ask you if you can identify that (handing).

A. Yes, sir.

Q. What is it?

A. A bid from the Union Iron Works to do the work on the "Hilonian" as per our specifications.

Q. And by your specifications what do you mean? The ones that have been shown you as "Siverson A" or the one that you have identified as your own, No. 1?

A. I am very sure they were all furnished with both of these specifications.

Q. Under the first tender? A. Yes, sir.

Q. What was the object of furnishing them with both sets of specifications?

A. The change in dates for the examination of the ship, and the opening of the bids.

Q. Were they furnished together or at separate times?

A. They were furnished with these first, with our exhibit first.

Q. With "Exhibit No. 1" first or "Siverson A"?

A. I will change that, the "Siverson A" first.

Q. When were they furnished with your "Exhibit No. 1," subsequently or prior? A. Subsequently.

Q. Can you state whether or no they had both

(Testimony of Charles W. Saunders.)

sets of specifications in their possession before the bids were made which you have identified.

A. Yes, sir, they all had both sets.

Q. Were those bids or either of them accepted?

A. None of them were accepted.

Q. Do you remember, Captain Saunders, when these bids were opened? [1528—1440]

A. I don't remember the exact date, but I know they were opened in the time specified in the second bid. I will change that. They were opened at the time specified in this second specification.

Q. That is yours, No. 1? A. Ours, No. 1.

Q. Were you present at the time they were opened? A. Yes, sir.

Q. Where were they opened?

A. In the main office of the Matson Navigation Company, 268 Market Street.

Q. Who else besides yourself were present?

A. Captain Matson, Mr. Gray of the United, I think it was Mr. Barnes of the Union and a representative from the Risdon.

Q. Do you remember his name?

A. I don't recollect. I had never met him before.

Q. You did not know him? A. No, sir.

Q. At that time did you have a talk or did you hear a conversation with Mr. Gray, with reference to this work? A. Yes, sir.

Q. Will you please repeat the conversation?

A. I cannot give the exact words, but Captain Matson told Gray that his bid was too high.

Q. Let me interrupt you there; were the repre-

(Testimony of Charles W. Saunders.)

sentatives of the Union or the Risdon, or either of them, present at that time?

A. They had both left. Mr. Gray had stayed.

Q. Now, please proceed with your recollection of the conversation.

A. The Captain had told Mr. Gray that the bids were too high and that he was going to call for more bids. Mr. Gray said that the uncertainty about the crank-shaft having to come out was his explanation of the bid being as much as it was. He suggested to the Captain that if he thought the bid was excessive it might be advisable to put a timekeeper on to check up the work. I don't think there was any more conversation; [1529—1441] I don't remember any.

Q. Do you remember whether he suggested any timekeeper at that time or not?

A. I think he did; he mentioned several names.

Q. Can you remember any of them?

A. I only remember one.

Q. What name was that?

A. That was Mr. Putzar.

Q. You spoke of Mr. Gray referring to the uncertainty about the removal of the crank-shaft. What do you know about that matter of uncertainty, if anything?

A. The Chief Engineer of the ship, Mr. Klitgaard, was certain that that would not need to come out. Mr. Gray thought it would. He had done considerable work on the "Hilonian" before and thought that that would be necessary.

(Testimony of Charles W. Saunders.)

Q. Did you hear him express that thought?

A. Yes, sir, I heard him say that.

Q. Was that before or after the bid of the United Engineering Works on July 27th?

A. I had heard that several months before.

Q. Had you discussed that matter with any other than Mr. Gray of the United Engineering Works?

A. I had talked to Mr. Christy about it.

Q. Did Mr. Christy ever make any investigation of that matter to your knowledge?

A. He went aboard the ship with me one time.

Q. When was that?

A. When the ship arrived from Honolulu in the latter part of June.

Q. What did he go aboard the ship for?

A. I had to go aboard to bring the ship up from quarantine. Captain Johnson [1530—1442] had got injured in Honolulu, and the mate was bringing her up from Honolulu—had a temporary license. I was going aboard to dock the ship and Mr. Christy went with me to see how the engines worked and try and form an opinion about the crank-shaft and machinery in general.

Q. Did you accompany him to the engine-room on that occasion? A. No, sir.

Q. Who was in charge of the engine-room on that occasion? A. Mr. Klitgaard.

Q. Who was his first assistant?

A. Mr. Kinsman.

Q. Did Mr. Christy make any statement to you relative to the examination which he had made of

(Testimony of Charles W. Saunders.)

the working of the engines at that time?

A. Yes, sir. After the ship had got under way, and I think after we got alongside of the dock I saw him and asked him how it looked down there. He said he thought everything looked very well; everything was working nicely.

Q. Was that all the conversation?

A. That is all of that conversation.

Q. Do you know, Captain Saunders, whether after the rejection of these first bids other bids were called for? A. Yes, sir.

Q. Were any received?

A. We received one—we received two.

Q. Who were they from?

A. We received one from the Union and one from the United.

Q. I ask you to examine Respondent Christy Exhibit “B” and see if you can identify it. (Handing.)

A. That is the second bid from the United Engineering Works.

Q. I ask you to examine “Respondent Matson Exhibit 6” and ask you if you can identify that.

A. That is the bid from the Union Iron Works. The Union Iron Works made no change in their first bid. [1531—1443]

Q. After the receipt of these two bids from the United Engineering Works and the Union Iron Works respectively, did you have any conversation or overhear any conversation with any representative of the United Engineering Works with refer-

(Testimony of Charles W. Saunders.)

ence to their second bid?

A. I had several conversations with Mr. Gray.

Q. Do you know whether Mr. Gray had any conversation with reference to their second bid, with Captain Matson?

A. He had a conversation at the time he accepted the bid.

Q. When who accepted the bid?

A. When Captain Matson accepted the bid.

Q. When was that?

A. That was after the arrival of the steamer in August—about the 18th of August, 1909.

Q. Where was that conversation?

A. In Captain Matson's private office.

Q. Who was present?

A. Captain Matson, Mr. Gray and myself.

Q. Do you know how Mr. Gray happened to be there?

A. Captain Matson told me to telephone to him.

Q. Did you do so? A. Yes, sir.

Q. And it was in response to this telephone message that he came? A. Yes, sir.

Q. Will you please now state what was the conversation that took place at that time.

A. When Mr. Gray came in the Captain said, "Well, Gray, I have decided to give you the job although I still think the bid is too high, but I want an understanding with you that if the crank-shaft does not have to come out of the ship we will get an allowance from the bid. I am going to put on a timekeeper, as you suggested, for the purpose of

(Testimony of Charles W. Saunders.)

getting that reduction.” That is about all of the conversation, except that Mr. Gray said, “Thank you.” I think that is about all. [1532—1444]

Q. Was there any suggestion as to what that deduction would be, in that conversation?

A. Either at that conversation or at some previous one, or at the previous one with Captain Matson when the first bids were rejected, Mr. Gray figured about \$2,000 would be the cost of removing that crank-shaft.

Q. After that conversation which you have just related, did you between that time and the time that the “Hilonian” was sent to the yard of the United Engineering Works, have any conversation with Mr. Gray? A. Several.

Q. With reference to what?

A. The time that she was to be at the yard.

Q. Who had charge of the matter of that time?

A. I was in charge of that. It depended on how soon we could get rid of the cargo entirely.

Q. How does it happen that in your specifications which I have marked your “Exhibit No. 1,” the time is there explicitly stated to be August 23d as the date from which the time limit on the bid is to run?

A. That is the time that we figured we could have her at their yard, for the work to begin.

Q. Prior to the ship going to the yard had Mr. Gray been informed by you of when she would be put there? A. Yes, sir.

Q. And what was that date?

A. August 23d.

(Testimony of Charles W. Saunders.)

Q. I call your attention to another matter, Captain. You have said that there was no reduction in the bids of the Union Iron Works. Will you please again examine the two respective bids of that company and see if that is exactly correct (handing)?

A. I was mistaken, I guess. There was no material deduction I should have said.

Q. I call your attention, Captain Saunders, to Respondent Christy Exhibit "B" and ask you if that is your writing in pencil there. (Handing.) [1533—1445]

A. It is not my writing.

Q. Will you please read that pencil memorandum. Does that, Captain, refresh your memory as to any matter that arose in the conversation between Mr. Gray and Captain Matson, that you have just last related?

Mr. FRANK.—How should that refresh his memory when it is not his writing, and apparently he does not know whether the statement contained there is true or false? How can he? There is no evidence of that statement being either true or false.

Mr. McCLANAHAN.—There again, Mr. Frank, I will have to differ with you as to the ability of a man to refresh his memory. I contend he can refresh his memory from seeing anything or hearing anything perhaps. It does not have to be in his handwriting in order to refresh his memory.

Mr. FRANK.—It has to have some definite relation to the case. You are offering him a piece of

(Testimony of Charles W. Saunders.)

paper that is not in evidence. There is no proof that it was put on there by anyone who knew anything about it or had anything to do with this case whatsoever. According to your theory you can make up any sort of a writing, put it under the witness' nose and ask him if that refreshes his memory.

Mr. McCLANAHAN.—That is right.

A. That written statement there was made to me personally by Mr. Gray.

Q. That is, the substance of it.

A. The substance of that statement.

Q. Where was this made—this statement?

A. That was made—I could not tell you the exact place, but it was made directly after the second bill was submitted.

Q. Was it made before it was accepted? [1534—1446]

A. It was made before it was accepted.

Q. As a matter of fact, I understand that the “Hilonian” was sent to the yards of the United Engineering Works on August 23d. Why was she sent there?

A. To have this work performed.

Q. What work do you refer to?

A. That work called for in the specifications.

Q. Do you know what time she arrived at the works of the United Engineering Works?

A. About 9 A. M. on the 23d.

Q. Do you know what day of the week the 23d was?

A. Monday.

Q. Were you there at the time of her arrival?

A. Yes, sir.

(Testimony of Charles W. Saunders.)

Q. State whether or not any preparations had been made to receive the "Hilonian" at the yards of the United Engineering Works on Monday morning, August 23d, 1909.

A. They had the berth ready and were waiting for her.

Q. Do you know after her arrival how soon work was commenced? A. Immediately.

Q. In what way?

A. The stripping of the engine.

Q. Had any work under these specifications been commenced by the United Engineering Works prior to the "Hilonian's" arrival at the yards?

A. Yes, sir, they commenced work that morning before she left our wharf.

Q. Do you know that? A. I know that.

Q. What was the character of the work that they commenced?

A. Stripping railings and so forth; any parts that they could get adrift to facilitate the work.

Q. Where did the workmen from the United Engineering Works board the "Hilonian" prior to the "Hilonian" proceeding to the yard of the United Engineering Works? [1535—1447]

A. At our wharf at that time.

Q. What wharf was that?

A. Pier No. 10, Howard Street.

Q. Did you Captain Saunders, have anything to do with the actual engagement of Mr. Putzar as a timekeeper? A. Nothing.

Q. Did you know Mr. Putzar at the time of the

(Testimony of Charles W. Saunders.)

suggestion of his name as a timekeeper?

A. Nothing at all.

Q. Had you ever seen him?

A. I never saw him.

Q. How long were you at the yards of the United Engineering Works on August 23d, 1909?

A. I spent about an hour and a half or two hours there in the morning and then came back there that afternoon.

Q. What time in the afternoon?

A. About half-past 4 or 5 o'clock.

Q. How long did you stay there then?

A. About 15 or 20 minutes probably.

Q. Was Mr. Putzar there when you were there in the morning?

A. He was not there at all that day.

Q. Not at all that day? A. Not at all that day.

Q. Do you know when Mr. Putzar first reported for duty as timekeeper?

A. The next day; the next morning.

Q. August 24th? A. August 24th.

Q. Were you there at that time?

A. I was not there when he came. I came there early in the morning and left for the city.

Q. When you were there early in the morning he had not reported? A. He had not reported then.

Q. When did you first meet Mr. Putzar?

A. That afternoon; the afternoon of Tuesday.

Q. August 24th? A. August 24th.

Q. Do you know when he first assumed his duties as timekeeper?

(Testimony of Charles W. Saunders.)

A. Mr. Klitgaard told me that he got there—
[1536—1448]

Mr. FRANK.—I object to what Mr. Klitgaard told him.

Mr. McCLANAHAN.—That is hearsay evidence. Do not put that in.

A. (Continuing.) He reported sometime that morning after I left.

Mr. FRANK.—I do not care what—

Mr. McCLANAHAN.—Do not be nervous, Mr. Frank. He is not saying he heard that from Mr. Klitgaard.

Mr. FRANK.—He evidently did not know it except what he heard from Mr. Klitgaard.

Mr. McCLANAHAN.—Let us have the answer and then you can move to have it stricken out. I will consent to it.

Q. What were you going to say, Captain?

A. He reported that morning after I left.

Mr. FRANK.—I move to strike that out. It must be hearsay.

The WITNESS.—He was there when I arrived in the afternoon.

Mr. McCLANAHAN.—Q. What time did you arrive in the afternoon?

A. Between 4 and 5 o'clock.

Q. During the progress of the work on the "Hilsonian" at this time who was in charge of the mechanical end of it for the Matson Navigation Company? A. Mr. Klitgaard.

Q. And he was the Chief Engineer?

(Testimony of Charles W. Saunders.)

A. Yes, sir.

Q. How often were you, during the progress of the work, at the "Hilonian"?

A. Usually twice a day.

Q. During the whole of the period?

A. At some periods when we had another steamer in I was absent once or twice, for several days at a time.

Q. That is, there would be several days when you would not go over there at all? A. Yes, sir.

Q. How often did that occur?

A. Not more than twice. [1537—1449]

Q. During the entire period of the repair work?

A. Yes, sir.

Q. What was your business over there, Captain?

A. In case anything came up, anything new, I was to consult with Captain Matson, carry word from Klitgaard to Captain Matson and keep him informed of the progress.

Q. You were then an intermediary between Captain Matson and Mr. Klitgaard? A. Yes, sir.

Q. During the progress of the work did you at times see Mr. Putzar? A. Frequently.

Q. Do you know what he was doing at the time that you saw him?

A. Sometimes he was around the ship; other times writing up his time.

Q. Did you have any supervision over Mr. Putzar?

A. None.

Q. Was it part of your duty to report to Captain Matson about Mr. Putzar's work?

(Testimony of Charles W. Saunders.)

A. Not about the time.

Q. You say that you at times saw Mr. Putzar writing up his time? A. Yes, sir.

Q. Where was this?

A. That was in the main office building there. I think Mr. Williamson's office.

Q. The main office building of the United Engineering Works?

A. The main office building of the United Engineering Works in Alameda.

Q. Can you describe the location of Mr. Williamson's office where Mr. Putzar was writing up the time in reference to the other offices of the United Engineering Works?

A. His office was the first to the right on entering from the yard; the entrance where the men passed through on their way to work.

Q. What office was next to Mr. Williamson's?

A. I believe there was a vacant office there next, and then Mr. Christy's office. I think that was it.
[1538—1450]

Q. On the same side of the hallway?

A. On the right hand.

Q. What was opposite?

A. Opposite was the timekeeper's office.

Q. Did you see Mr. Putzar working on his time on more than one occasion?

A. On several occasions.

Q. What did you see?

A. Writing in the timekeeper's book is all that I recollect.

(Testimony of Charles W. Saunders.)

Q. I show you "Libelant Curtis Exhibit No. 4" and ask you if you can identify that book (handing)?

A. I believe that was the book.

Q. You believe that was the book he was writing in? A. Yes, sir.

Q. Can you remember, now, any other papers or documents, books or other matters, that were used by Mr. Putzar at such times?

A. I don't recollect any other.

Q. How do you know that he was writing up his time?

A. The first time that I went in there I asked him what he was doing.

Q. What did he say? A. Writing up the time.

Q. Had you ever given any instructions to Mr. Putzar as to how he should write up his time?

A. Never. I knew nothing about it.

Q. After the completion of the repairs on the "Hilonian," Captain Saunders, did you ever have any conversation with Mr. Putzar about his time?

A. I don't recollect of any except that Captain Matson wanted a report of the time.

Q. Did you speak to Mr. Putzar about that?

A. Yes, sir.

Q. What was said?

A. He said he would get it in as soon as possible.

Q. When did the "Hilonian" sail after the repair work had been completed? A. September 25th.

Q. Where did she sail for? A. Honolulu.

[1539—1451]

Q. Prior to her sailing had Mr. Putzar rendered

(Testimony of Charles W. Saunders.)

his report on the time? A. No, sir.

Q. He did finally render a report, did he not, or do you know?

A. He never rendered one on the time, that I know of.

Q. After the "Hilonian" had sailed when was it first that you next saw this time-book, "Curtis Exhibit 4"? A. I think it was about two months.

Q. Where did you get it? A. From Mr. Putzar.

Q. Was that the first time that that time-book came into the hands of the Matson Navigation Company? A. Yes, sir.

Q. And at that time Mr. Putzar had or had not made any report on his time? A. None.

Q. Mr. Putzar went out with the "Hilonian" as Chief Engineer, did he not? A. Yes, sir.

Q. Who appointed him to that position?

A. I appointed him.

Q. When was that?

A. That was probably a week before she went out.

Q. Under what authority were you acting then?

A. Under Captain Matson's authority.

Q. I understand Mr. Klitgaard had resigned?

A. He had resigned.

Q. Do you know whether Mr. Klitgaard had charge of the mechanical end of the repair work during the whole of the period of the repairs?

A. During the whole of the period while at the works.

Q. Do you know when the "Hilonian" left the works of the United Engineering Works?

(Testimony of Charles W. Saunders.)

A. I think on the morning of the 22d of September.

Q. Do you know when the "Hilonian" was docked on the Marine railway of the United Engineering Works? A. September 10, 1909. [1540—1452]

Q. Do you know the hour? A. One o'clock.

Q. Were you there at that time?

A. Not at that time.

Q. When were you there?

A. I arrived there between 4 and 5 o'clock P. M.

Q. Was anyone with you upon your arrival?

A. Mr. Klitgaard was there.

Q. Was anyone with you? A. No one with me.

Q. Do you know a man named Steward, a surveyor for Lloyd's? A. Yes, sir.

Q. Was Mr. Stewart there at that time?

A. Not that afternoon; he came with me the next morning.

Q. Any representative of the United Engineering Works on the "Hilonian" at the time of your arrival on the afternoon of September 10th when she was on the Marine railway?

A. I think Mr. Williamson and Mr. Merryman.

Q. Who was Mr. Williamson?

A. He was the superintendent of the yard.

Q. And who was Mr. Merryman?

A. I think he was the boss rigger.

Q. Do you remember seeing Mr. Christy there?

A. I do not remember seeing him there that night.

Q. Do you remember of any matter of discussion that took place that afternoon at which were present these two gentlemen, or either of them?

(Testimony of Charles W. Saunders.)

A. The discussion of the rudder was the important thing that afternoon.

Q. It was discussed, was it?

A. It was discovered when she went on the dock and it was discussed on my arrival there.

Q. What was the general nature of the discussion?

A. As to the work to be done on her. She was found in bad condition. [1541—1453]

Q. Was there ever any time when the matter of doing that work was in abeyance? A. No.

Q. What was the discussion, then?

A. As to the replacement of pintles and boring the gudgeons.

Q. That is, the discussion was as to what was to be done? A. Yes, what was to be done.

Q. Do you know, Captain Saunders, whether any work was actually commenced on the 10th of September on the gudgeon work? A. Not on the 10th.

Q. When was the work actually commenced?

A. The next morning, on the morning of the 11th.

Q. State whether or not the work on the gudgeons was under way at the time of your arrival next morning.

A. No. I arrived before they started work next morning.

Q. What time did you arrive?

A. Between 7 and 20 minutes past 7. I was usually there in the morning before they started work.

Q. What time did the work commence on the gudgeons?

A. It was 20 minutes past 7 when they started,

(Testimony of Charles W. Saunders.)

when they prepared for it.

Q. So that the work then was commenced immediately upon the resumption of work on the morning of September 11th? A. Yes, sir.

Q. Do you know whether that work once commenced was continued without interruption, or not?

A. There was no interruption that I know of.

Q. You say Mr. Stewart was with you on the ship the next morning, that is, September 11th?

A. On the morning of the 11th; on account of that work I went to the city for Mr. Stewart.

Q. What did you want Mr. Stewart there for?

[1542—1454]

A. Because he is a Lloyd's Surveyor, and the vessel was classed in Lloyd's.

Q. You have stated, I believe, that you acted as an intermediary between Klitgaard and Captain Matson. Do you know whether Captain Matson was here in San Francisco, or in this jurisdiction, during the whole of the time of the repair work?

A. Not for the whole of the time.

Q. Who represented him while he was away, in this particular matter?

A. Mr. Klitgaard was in charge of the work at that time.

Q. You said that as a part of your duty you reported changes; what changes do you refer to?

A. There were several changes came up.

Q. Changes in what?

A. Some of the work was not found necessary.

Q. Some of what work?

(Testimony of Charles W. Saunders.)

A. Some of the work in the main specifications was not found necessary.

Q. And there were changes made in the main specifications?

A. There were some changes made in the main specifications.

Q. Those are the changes you reported to Captain Matson? A. Yes, sir.

Q. What changes did you report to Captain Matson?

A. The first thing I reported was that the crank-shaft did not have to come out. The next, I think, was a balance-cylinder that they put in in place of a piston that was called for.

Q. Can you examine the specifications and tell exactly what the balance-cylinder was in place of?

A. Yes.

Q. Please do so.

A. In place of item 2 of the specifications.

Q. You are now looking at your "Exhibit No. 1"?

A. Yes, sir. [1543—1455]

Q. Were you present when that change was agreed upon?

A. Not at the first. I was present when it was finally agreed upon.

Q. Who were present at that time?

A. Mr. Klitgaard, Mr. Williamson and myself, and possibly some others.

Q. Do you remember, now, the gist of the conversation?

A. Mr. Klitgaard explained to me that the work

(Testimony of Charles W. Saunders.)

as called for in the specifications did not need to be done—

Mr. FRANK.—I object to what Mr. Klitgaard explained to this witness.

Mr. McCLANAHAN.—Q. Was Mr. Williamson there at the time? A. He was.

Q. Go on.

A. (Continuing.) And that the United Engineering Works, through Mr. Williamson, had agreed to put what he called the balance-cylinder on as compensation for not performing this item 2 of the specifications.

Q. Was the question of debit or credit to either party mentioned?

A. There was to be no debit or credit; it was considered an equal exchange.

Q. Did Mr. Williamson make any statement at that time of approval or disapproval?

A. He thought that that would be the proper thing to do with the cylinder.

Q. Was it agreed, or not, at that time, to make the compensation?

Mr. FRANK.—That is a conclusion. He can testify to what was said by each party. Whether it was agreed upon, or not, is a legal conclusion which the Court will draw.

A. I reported that to Captain Matson and he said that it would be all right if Mr. Klitgaard approved. I so reported [1544—1456] to Mr. Klitgaard, that he was to do as he considered best in that respect.

Q. What was the next change in the original spec-

(Testimony of Charles W. Saunders.)

ifications that came to your knowledge and you reported to Captain Matson?

A. The next that I remember was the substitution of a patch for a column.

Q. Will you refer to your "Exhibit No. 1" and tell us what specification number that column comes under? A. Item 7.

Q. Do you know anything about that change?

A. Yes. There had been a good deal of talk about that change.

Q. Talk between whom?

A. There had been a good deal of comment at the yard. Mr. Gray and Mr. Williamson thought that that iron column called for was not a suitable arrangement and suggested a patch, which was finally agreed on, as being the best thing. I told Captain Matson about that, and he said that if Mr. Klitgaard advised that it would be all right.

Q. Did you know whether the patch was substituted for the column called for by item 7?

A. The patch was substituted.

Q. Do you know anything about any money compensation, a debit or a credit on that proposition?

A. There was to be no compensation, unless the weight of the patch exceeded a certain amount, about 900 lbs.

Q. And in case it did exceed the weight suggested, what was the understanding?

A. The ship was to pay for the extra weight.

Q. Do you remember reporting any other changes in the work to Captain Matson?

(Testimony of Charles W. Saunders.)

A. I think that was the last change before the Captain went east.

Q. Do you know of any changes subsequent to the one just suggested?

A. There was one change, where the work [1545—1457] called for on the windlass was not done, and there were two stanchions substituted under the forecastle-head deck.

Q. Was that done with your approval?

A. Yes. Mr. Klitgaard recommended it.

Q. Do you know anything about the negotiations which led up to that change?

A. I was there when Mr. Williamson and Mr. Klitgaard, and I think Captain Johnson was there also when that was discussed. It was on Captain Johnson's recommendation that the capstan was connected with the windlass. It was unimportant, and we decided not to have that work done, but to exchange for the two stanchions under the forecastle-head.

Q. Who was present at the time of that negotiation?

A. Mr. Williamson, Mr. Klitgaard, Captain Johnson, formerly the master of the "Hilonian," and myself.

Q. During the repairs on the "Hilonian," do you know whether the rollers or the chain-leads for the quadrant were raised, or not?

A. The rollers for the chain-leads were not raised.

Q. Captain, do you know about any credits that were allowed the Matson Navigation Company by the United Engineering Works, arising out of this repair

(Testimony of Charles W. Saunders.)

job? A. Yes.

Q. I show you a couple of sheets of paper and ask you if you can identify them (handing).

A. This was for scrap-brass, 3,166 lbs.

Q. You can identify them, can you?

A. Yes, sir.

Q. What are they?

A. This was for scrap-brass.

Q. They are credit memorandums, are they?

A. Yes.

Mr. McCLANAHAN.—We offer in evidence the credit memorandums identified by the witness, dated November 1 and November 20, 1909, respectively, and being in the sum of \$284.94, and [1546—1458] \$235.07, respectively, and ask that they be marked as a collective exhibit “Respondent Saunders No. 2.”

(The document is here marked “Respondent Saunders Exhibit No. 2.”)

Mr. FRANK.—That is already admitted, Mr. McClanahan; it is in the pleadings; you are given credit for it. So that that evidence is immaterial. That credit is given to you in the libel.

Mr. McCLANAHAN.—Q. Captain, do you remember the date when the “Hilonian” sailed from this port in January, 1910?

A. About the middle of January.

Q. Can you not remember the exact date?

A. Not the exact date.

Q. Can you ascertain that for me?

A. I can find out easily.

Q. Captain Saunders, did Chief Engineer Klit-

(Testimony of Charles W. Saunders.)

gaard make a report on this repair work?

A. Yes, sir.

Q. How long after the completion of the work was the report made?

A. Inside of a week, I should say, after the completion of the repairs.

Q. Who received the report? A. I did.

Q. Did you ever show that report to Captain Matson? A. I never did.

Q. Did he know of it?

A. I told him I had a report from Klitgaard, but he never saw it.

Mr. McCLANAHAN.—Mr. Frank, I would be glad to introduce that report if I had it. We have made search for it everywhere, even up to this morning, and cannot find it. I understand that you have a copy, or your client was furnished with a copy at the time Mr. Klitgaard delivered the report to Captain [1547—1459] Saunders, or soon after, and if that information is correct I would be very glad to have you produce the report and I will offer it in evidence.

Mr. FRANK.—How do you understand that?

Mr. McCLANAHAN.—Well, that is not essential. The fact is, as we understand it, that you have a copy. If you have, we will be glad to introduce it; if you have not a copy, then my information is incorrect and I am unable to produce one.

Mr. FRANK.—It seems to me you have lost a great many of your records that are material in this case.

Mr. McCLANAHAN.—And it seems to me that the

(Testimony of Charles W. Saunders.)

United Engineering Works have lost a great many of their records that are material in this case.

Mr. FRANK.—No, sir; we have not lost anything that we are in the habit of keeping. You have lost things that you are in the habit of keeping.

Mr. McCLANAHAN.—I will say, Mr. Frank, that that report was—from the evidence which we have—no, I will withdraw that. There is a dispute as to whether that report was turned over to me, or not. I do not remember that it ever was. I have searched everywhere for it and cannot find it. And search has been made in the office of the Matson Navigation Company for it.

Q. Captain Saunders, do you know of the making and installation of a circulating-pump by the United Engineering Works on the “Hilonian”?

A. Yes, sir.

Q. Was that or was it not a contract job?

A. That was a contract job.

Q. Will you please look at this sheet of paper and see if you can identify that as connected with the circulating-pump contract [1548—1460] (handing)?

A. That is evidently a copy of the original.

Q. Do you so recognize it? A. Yes, sir.

Mr. McCLANAHAN.—We offer in evidence the paper identified by the witness, dated January 18th, 1909, addressed to the Matson Navigation Company and signed “United Engineering Works per H. P. Gray, Secretary,” and ask that it be marked “Respondent Saunders Exhibit No. 3.”

(Testimony of Charles W. Saunders.)

(The document is marked "Respondent Saunders Exhibit No. 3.")

Mr. FRANK.—Q. You say, Mr. Saunders, it is evidently a copy; you arrive at that conclusion simply because you see on the paper that was shown you the word "Copy"? A. No.

Q. Have you any independent recollection of the terms of that?

A. I have a very strong recollection of the terms.

Q. Well, what were the terms as you recollect them?

A. We proposed to furnish and install a circulating-pump. I have not read that thing for a long while, Mr. Frank. I simply looked it over. It is about the same as the original, as I remember it.

Q. You have no present recollection of the terms of the original, have you?

A. I could not give you the terms.

Q. If you have, Captain, give it to us, give us what you recollect, whether it is the same as this or otherwise. We are simply asking for your recollection.

A. I recollect that the original bid called for the furnishing and installation of a circulating-pump, for the sum of \$1,350, and I recollect that that work was to be done without interfering with the movement of the ship.

Q. Is that all you recollect about the terms?

A. I recollect that there was another offer for another pump, [1549—1461] but I took no interest in it because that pump was not accepted.

Mr. McCLANAHAN.—Mr. Frank, if that is not a

(Testimony of Charles W. Saunders.)

correct copy of the bid, it is in your possession and power to disprove it.

Mr. FRANK.—I am asking the witness now, because he has identified it, and before you offer it in evidence I want to show on what basis he has identified it.

Q. Is that all the recollection you have of it?

A. Yes.

Q. And is this the only paper that was connected with that contract?

A. I do not remember that that contract was ever accepted in writing. I believe it was a verbal acceptance.

Q. But you do not know; you are simply believing it now?

A. I know the bid was accepted, but I do not know whether it was in writing or verbal.

Q. How do you know it was accepted?

A. Because Captain Matson told me he accepted it.

Mr. FRANK.—I object to the introduction of the document in evidence. The witness is evidently simply following the suggestion—

The WITNESS.—I am not following any suggestions, Mr. Frank.

Mr. FRANK.—One moment, Captain, I am talking now. I say he is evidently following the suggestion contained in that instrument in identifying it; and I object to it on the further ground that it is immaterial to any of the issues in this cause.

Mr. McCLANAHAN.—Q. Do you know that that circulating-pump was made and installed by the

1790 *Matson Navigation Company vs.*

(Testimony of Charles W. Saunders.)

United Engineering Works? A. Yes.

Mr. FRANK.—This is all subject to the objection that it is immaterial, this whole line of examination.

[1550—1462]

Mr. McCLANAHAN.—Q. Do you know whether or not the contract price was paid for the work by the Matson Navigation Company?

A. I believe it was.

Mr. McCLANAHAN.—I think that is all, Mr. Frank.

Mr. FRANK.—It is now just about 4 minutes to 12. I suppose we might as well take a recess before taking up the cross-examination.

(A recess was here taken until 2 P. M.) [1551—1463]

AFTERNOON SESSION.

Mr. McCLANAHAN.—With your permission, Mr. Frank, I will put Mr. Stewart on the stand. It will only be for a moment.

[**Testimony of William H. Stewart, for Respondent.**]

WILLIAM H. STEWART, called for the respondent, sworn.

Mr. McCLANAHAN.—Q. Mr. Stewart, do you remember the occasion of a visit made to the steamship "Hilonian" in September, 1909, with Captain Saunders? A. Yes, sir.

Q. What was that day? A. On September 11th.

Q. Did you at that time make any notes with reference to the object of your visit? A. Yes, sir.

Q. What was the object of your visit?

(Testimony of William H. Stewart.)

A. The object was to examine the steamer "Hilonian" on the Marine railway at the United Engineering Works and make an examination of the tail-shaft at the same time.

Q. Have you that memorandum that you made at the time with you? A. Yes, sir. (Producing.)

Q. From an examination of the memorandum, is your memory refreshed with reference to whether or no there was any work being done at that time on the gudgeons of the "Hilonian"? A. Yes, sir.

Q. Was there any such work being done?

A. Yes, sir, there was work being gone on with on the rudder.

Q. And when did you arrive there?

A. I don't know what time of the day it was. I could not say whether it was morning or afternoon. I rather think it was after lunch.

Q. You went there with Captain Saunders, did you? A. Yes, sir.

Q. But you can testify there was work going on while you were there on the gudgeons?

A. Yes, sir.

Mr. McCLANAHAN.—That is all. [1552—1464]

Cross-examination.

Mr. FRANK.—Q. What is the memorandum that you have there, Mr. Stewart? A. Shall I read it?

Q. Can I look at it? A. Oh, yes (handing).

Q. When you went there, Mr. Stewart, what was being done?

A. Well, the tail-shaft had been drawn; the propeller had been removed and the tail-shaft drawn in-

(Testimony of William H. Stewart.)

board for examination. I examined the tail-shaft and passed it as being in good order. I examined the rudder and at that time the rudder had been raised up.

Q. That is, set up on blocks?

A. Yes, sir, jacked with pintles clear of the gudgeons. I found the bushings in the gudgeons and also the pintles very badly worn, and agreed that it was necessary that the gudgeons should be bored out and bushings put in and new pintles put in.

Q. So at the time you were there then, they were not actually work in doing that specific thing, but they had simply jacked up the rudder for examination. Is that not true?

A. I am not prepared to say how far they had gone with the actual work, because I do not remember that exactly, but my notes simply state that the gudgeons were being rebushed and pintles renewed to their original size.

Q. That, of course, would be your conclusion as to what work was to be done when completed. You are not prepared to say that they were at work on that at the time you were there?

A. I could not say exactly as to that, how far they had progressed in it.

Q. As a matter of fact, they could not rebore the bushings, could they, with the rudder in that position?

A. The rudder was required to be moved out of the way somewhat to make room to rebore the gudgeons.

[1553—1465]

(Testimony of William H. Stewart.)

Q. Your principal purpose in going there was to examine the tail-shaft, did I understand you to say?

A. To examine the tail-shaft and the vessel generally on the dock—the outside of the vessel.

Q. How long did you remain?

A. I don't remember. Probably about an hour, or a little longer maybe.

Q. Did I understand you to say on your direct examination that it was agreed that the work should be done on the rudder pintles?

A. I believe I did say that.

Q. When you say "agreed," how did you mean?

A. I mean with the owner's representative, Captain Saunders.

Q. That is, you agreed with him?

A. I made certain recommendations and he agreed that these recommendations would be carried out.

Q. And that is what you mean when you used the word "agreed"? A. Yes, sir. [1554—1466]

[Testimony of Charles W. Saunders, for Respondent (Recalled).]

CHARLES W. SAUNDERS, recalled, direct examination resumed:

Mr. McCLANAHAN.—Q. Did you get the date of the sailing of the "Hilonian" from this port in January? A. January 12th.

Q. 1910? A. Yes, sir.

Q. There were a few questions I omitted this morning that I should like to ask you. Did Mr. Putzar take out the ship as Chief Engineer on that trip?

A. He did; yes.

(Testimony of Charles W. Saunders.)

Q. How many trips after that did he make?

A. I believe that was his last trip.

Q. Do you have any knowledge of the letting of what is called the smokestack contract?

A. Yes, sir.

Q. Were you present when it was let?

A. I was present when it was awarded.

Q. What was said at that time? First, who was present?

A. Mr. Gray, Captain Matson, Mr. Klitgaard and I think Mr. Williamson. I am not sure about him.

Q. What was said at that time?

A. There was considerable discussion as to the condition of the smokestack. Finally, Captain Matson asked Mr. Gray for a price.

Q. For what?

A. To remove, make and install a new smokestack. Mr. Gray made a price of \$900, which was accepted verbally at that time.

Q. Anything else said at that conversation?

A. They had an understanding then—

Mr. FRANK.—Tell the conversation. I object to the conclusion about it.

A. I will give you the gist of the conversation.

Mr. McCLANAHAN.—Q. You are not required to do more than [1555—1467] you can. If you can remember it word for word, that is the best evidence. If you cannot remember it word for word give the gist of it?

A. The gist of it was that the ship was not to be delayed over the specified time in the contract on ac-

(Testimony of Charles W. Saunders.)

count of the installation of the new smokestack.

Q. And what was that specified time?

A. 26 days; 25 days from the time of her arrival at the yards.

Q. What date was the smokestack contract let?

A. That was on the day before Captain Matson went East, on the 9th of September.

Q. Captain, were you present when there was a conversation with reference to the repairs to the tank-top? A. Yes, sir.

Q. Who was present at that conversation?

A. That was at the same time, and the same people present.

Q. What was the conversation with reference to the tank-top?

A. Mr. Gray had quoted a price for removing and replacing the tank-top.

Q. Was that in writing?

A. He had submitted a price in writing.

Q. I show you "Matson Exhibit No. 1" and ask you if you can identify that paper (handing)?

A. That is the bid.

Q. Is that your writing at the bottom "Rejected"?

A. It is not my writing.

Q. Now, proceed, please, with the conversation.

A. The tank-top came up for discussion, and Captain Matson said that Mr. Gray's bid he considered too high, but as the tank-top had to be renewed he would let them go ahead with it on a time and material job, but he wanted separate time kept for that particular work.

(Testimony of Charles W. Saunders.)

Q. Who was he talking to?

A. Mr. Gray. [1556—1468]

Q. Was there any reply to that?

A. Only that Mr. Gray would do so; he would see that separate time was kept.

Q. Was there anything said about the price?

A. The price was not to exceed \$1250.

Cross-examination.

Mr. FRANK.—Q. Captain, when you speak about a talk having taken place about the crank-shaft being out of shape, and the ship needed an overhauling, to whom do you refer as having taken part in that talk?

A. It was talked over a number of times between Mr. Klitgaard and Mr. Gray, and possibly others of the United Engineering Works that I don't recollect.

Q. Were you present?

A. I have been present at some of the conversations.

Q. How can you testify to a number of times as to conversations at which you were not present?

A. I was present when there were a number of conversations between them.

Q. What dates were those conversations?

A. I could not give you the dates.

Q. You have been giving dates here Mr. Saunders of all these other transactions without hesitancy and without any memorandum. How does it happen you can give those dates so readily and cannot give me any date now?

A. Very likely, if I should name the dates of every day that the steamer was in port or had been in port

(Testimony of Charles W. Saunders.)

for two or three trips previous to the contract being let I would strike it pretty squarely because it was a very frequent topic of conversation.

Q. We will come back to that, but answer the question now that I asked you. [1557—1469]

Mr. McCLANAHAN.—I submit that the question has been answered.

Mr. FRANK.—Read the question, Mr. Reporter.
(The Reporter reads the question.)

A. Some of the dates that I have given are in particular instances where contracts were awarded.

Q. Is that your full reply?

A. I think that is all.

Q. You have given dates and hour when you have gone over to the United Engineering Works. Have you been carrying those in your mind for two years or more?

A. Yes, sir. That was the first repair job of any importance that I had ever attended. It was my custom to go there to the yard in the morning from my home the first thing, and to go to the yard again on my way to my home in the evening.

Q. Is that the reason that you have been able to testify that Gray was informed on August 23d that the vessel would be at the yards?

Mr. McCLANAHAN.—I submit there is no such evidence in the record that Gray was informed on August 23d that the vessel would be at the yard.

Mr. FRANK.—Q. Go on and answer the question.

A. The date of August 23d had been considered ever since the contract was considered as being the

(Testimony of Charles W. Saunders.)

date that we could get her to the yards.

Q. Is that the reason that you are able to give the exact date and the time when you say Mr. Putzar reported for duty?

A. I know he reported for duty on the morning of the day after she went to the yard, and she went to the yard on the morning of August 23d.

Q. Is that the reason that you have been able to fix in the [1558—1470] same way without reference to any date September 22d as the day when she left the works?

A. I believe in my former answer I said “about September 22d.” I know she was away from the yards about two days before she sailed. She sailed on the 24th.

Q. How do you fix the 24th as her sailing date now after two years?

A. Well, I know that she was delayed for about two days after her regular sailing date.

Q. Does she sail on the 24th of every month? Is that her regular sailing date?

A. No, sir. She was sailing at that time every 28 days.

Q. How does that help you fix the date of her regular sailing date?

A. The sailing dates are frequently up for discussion with me in the course of the business.

Q. What was the sailing date of the “Enterprise” two years ago?

A. She was on an irregular schedule.

Q. An irregular schedule?

(Testimony of Charles W. Saunders.)

A. I don't recollect that date.

Q. Have you any other vessels that were then on regular schedule besides the "Hilonian"?

A. None, not at that time.

Q. Not at that time? A. No, sir.

Q. What was the sailing date of the "Wilhelmina" a year ago? A. A year ago this month?

Q. Any time when she sailed about a year ago. What are you doing now,—figuring back from her last sailing?

A. No, sir, I am not doing that. She sailed on her first voyage from here on February 10th, 1910.

Q. Do you remember any other voyage besides her first voyage?

A. I probably could if I gave it sufficient attention without figuring back. [1559—1471]

Q. Figuring back?

A. Without figuring back.

Q. What attention did you give to the dates of the "Hilonian" that enables you to fix them as you have done?

A. It was a very important detail at that time.

Q. You mean to tell us now, you have carried all these dates in your memory so that you are able to promptly answer up every date now without refreshing your memory on the subject?

A. The case of the "Hilonian" has had particular attention paid to it ever since. It has been in my mind a great deal, and those dates would naturally be of more importance than others.

Q. What date was she docked?

(Testimony of Charles W. Saunders.)

A. She was docked on September the 10th.

Q. When did that become an important item in your mind? At the time she docked?

A. It was very important from the time she went over there.

Q. From the time she went over there?

A. Yes, sir.

Q. And, have you carried that in your mind without refreshing your memory ever since?

A. It has been frequently called to my attention.

Q. By whom?

A. In the course of business at the office, and knowing this suit was being instituted.

Q. What was the course of the business at the office, that would bring this question of the docking of the "Hilonian" on September the 10th to your mind?

A. We have to dock those ships so often, and we figure from the previous time of docking when she will require docking on the next occasion.

Q. When was she docked on the next occasion?

A. She was docked at the Union Iron Works about September the 1st, 1910. [1560—1472]

Q. Does that figuring apply also to the hour of the day that she was docked? A. No, sir.

Q. How did you happen to be able to fix one o'clock as being the hour of the day when she was docked?

A. Because when I was there in the morning they were preparing to put her on the dock. When I returned in the afternoon she was on the dock just dry. Ordinarily it takes about two hours to get a vessel on the dock.

(Testimony of Charles W. Saunders.)

Q. Now, let me come back to the talk about the crank-shaft. Will you state any particular time you were present previous to the letting of this contract when Mr. Klitgaard and Mr. Gray talked over the question as to whether or not the crank-shaft should come out?

A. We talked it over, I think it was, the 22d of June, after the ship's arrival at the dock.

Q. Where were you then?

A. At the steamer "Hilonian" pier 10.

Q. How long after her arrival?

A. The same day.

Q. How long—what time of the day—how long after her arrival that day?

A. Probably within an hour after arrival at the dock.

Q. How was Mr. Gray brought to the dock?

A. He was on the dock I believe when the ship arrived there.

Q. You say you believe. Do you mean us to understand that you have recollection of it or that you are guessing at it?

A. Either when she arrived at the dock or shortly after she arrived.

Q. What brought him there?

A. Mr. Gray usually was on the dock when a steamer of ours got in, in case there was any work that required attention.

Q. What kind of work could he expect to be down there on the dock for? Does not the engineer keep his vessel up while on the [1561—1473] trip?

(Testimony of Charles W. Saunders.)

A. On every voyage, when a ship returns to port, there is more or less work that has to be attended to by the yards, the iron works ashore, which is impossible for them to fix up while the ship is at sea and under way.

Q. Then, on this occasion, you say you and Gray and Klitgaard were together on the occasion of this conversation?

A. I believe so, and I think Mr. Christy.

Q. Now, what was said by each of these parties at that time upon the subject?

A. Just the general conversation about the condition.

Q. About the condition of what?

A. Of the crank-shaft and the engine in general.

Q. In general. Now, which do you wish us to understand was the substance of the conversation, the engine in general or the crank-shaft in particular?

A. The crank-shaft would come under the engine in general.

Q. What did they say about the crank-shaft?

A. Well, I could not give you the exact words, but I could say that Mr. Kilgaard contended that it was not necessary to take out the crank-shaft. Mr. Gray was then apparently in doubt as was also Mr. Christy.

Q. That was, you say, on what date?

A. I believe the 22d of June.

Q. The 22d of June? A. Yes, sir.

Q. Did she go off on the voyage then without repairs?

(Testimony of Charles W. Saunders.)

A. She had minor repairs at that time.

Q. When did she return here?

A. She returned here in July.

Q. What date?

A. About the 27th of July, possibly earlier.

Q. Is that the date when you say that Mr. Christy went aboard the vessel with you at Quarantine?

A. On the June trip, about the 22d of June.
[1562—1474]

Q. On the June trip? A. Yes, sir.

Q. And not on the July trip?

A. Not on the July trip.

Q. And that is the occasion when you say Mr. Christy came out and told you that she was running nicely? A. That is the occasion.

Q. Then if she was running nicely, how did it happen that Mr. Christy was of the opinion that the crank-shaft should come out?

A. I believe he relied on Mr. Gray's opinion.

Q. That is all that you can say about it?

A. That is all.

Q. What causes you to believe that?

A. Mr. Gray was the one that was most active in the "Hilonian" work, paid more attention to it, was on the ship more.

Q. Had Mr. Gray gone out with Mr. Christy to examine the vessel as she was coming in?

A. No, sir.

Q. What was the purpose of Mr. Christy's going out there?

(Testimony of Charles W. Saunders.)

A. To examine the engine when the ship was under way.

Q. And you want us to understand that that is a more favorable condition to form a judgment, is it not?

Mr. McCLANAHAN.—I object to the question as calling for the conclusion of the witness.

Mr. FRANK.—Q. Go on and answer the question.

A. You can always judge a machine better when it is in motion.

Q. Under those conditions you think that though Mr. Christy had made this examination under more favorable conditions than Mr. Gray, he was referring to Mr. Gray's opinion; is that right?

A. That is the idea.

Q. When was there another occasion when that subject came up between you?

A. I could not give you any other date.

Q. Can you fix any other conversation by any other circumstance?

A. Not by any other circumstance, no. [1563—1475]

Q. Can you fix any other conversation in any other way that you know of?

A. No, sir, none other than what I have given you.

Q. So, then, this is the only one that you remember; is that right?

A. That is the only one that I remember the date of.

Q. It is the only one that you remember any circumstance whatsoever associated with it, is it not?

(Testimony of Charles W. Saunders.)

A. It is the only one where there is any particular circumstance associated with it.

Q. And you wish us to understand now, though you cannot remember any other fact connected with the conversation, that there were other similar conversations at which you were present?

A. There were.

Q. Can you give us any detail of those other, or any of other conversations?

A. No details other than that Mr. Klitgaard and Mr. Gray differed so much in their opinions.

Q. In what way?

A. Mr. Klitgaard believed that the crank-shaft would not need to come out. Mr. Gray believed it would.

Q. When was it that Mr. Klitgaard drew the specifications which you have testified to here?

A. He made the notes of the specifications during one of his voyages at sea.

Q. Which voyage?

A. The voyage probably in July.

Q. Why do you say probably?

A. Because the first time that I saw those notes was on his arrival here from the July trip.

Q. When did he draw them up finally?

A. I believe it was the day after his arrival in July.

Q. Did he draw them up in your presence?

A. He gave them to the stenographer in my presence.

Q. The stenographer where?

(Testimony of Charles W. Saunders.)

A. In our main office, 268 Market Street.

Q. Did he make any comment on them to you at that time? [1564—1476]

A. None that I remember.

Q. Did you talk that matter over with Captain Matson before those specifications were drawn up?

Mr. McCLANAHAN.—What matter?

Mr. FRANK.—The matter of the detail of the specifications.

A. I did not talk it over with him.

Q. Did Klitgaard talk to him in your presence?

A. Not in detail in my presence.

Q. Not in detail in your presence? A. No, sir.

Q. Did he talk with him about it subsequently in your presence, subsequently to drawing up the specifications? A. No, sir.

Q. Then he never talked to him in your presence about these repairs? A. Not in detail.

Q. What do you mean by not in detail?

A. He never went through the whole specifications in my presence with Captain Matson.

Q. What part of the specifications did he go through in your presence with Captain Matson?

A. The crank-shaft.

Q. That is the only thing?

A. That is the only thing in detail.

Q. What did he say at that time about the crank-shaft?

A. He said he hoped it would not need to come out. He hoped that Mr. Klitgaard was right.

Q. Who are you speaking of now as having said

(Testimony of Charles W. Saunders.)

that? A. Captain Matson.

Q. I am asking you what Klitgaard said.

A. Klitgaard said that he did not think it would have to come out; although Mr. Gray thought so, he did not think so.

Q. What did you understand to be meant by the crank-shaft having to come out?

A. That it would have to be removed from the ship to the shop for some defect. [1565—1477]

Q. What were the particular repairs that were contemplated at that time to the crank-shaft?

A. That I did not understand.

Q. Do you understand to-day?

A. I understand a little more to-day.

Q. So the entire conversation concerning this crank-shaft, whether between Mr. Gray and Mr. Klitgaard previous to the drawing of the specifications, or between Mr. Klitgaard and Captain Matson in your presence after the drawing of the specifications, had only to do with the simple question as to whether or not the crank-shaft was to be taken out of the ship for removal to the shop; is that right?

A. That is about all that was discussed with me while I was present.

Q. That is all at any of these conversations that you have been testifying to, is it?

Mr. McCLANAHAN.—I submit the witness has answered the question.

Mr. FRANK.—Then it will not hurt him to answer it again.

A. That is all I remember.

(Testimony of Charles W. Saunders.)

Q. Now, Captain, you were over there almost daily? A. Almost.

Q. When you went over there did you go down into the engine-room to see what work was being performed? A. Sometimes.

Q. When you say sometimes, did you do it sufficiently to keep yourself advised of what was going on?

A. I went down there every time until I knew that the crank-shaft did not need to be taken out.

Q. That was your only purpose in going down there?

A. That is all. Captain Matson was very anxious to know whether it was necessary to take it out or not.

Q. What did you see them do with the crank-shaft then, up to that time? A. They were stripping it.

Q. What do you mean by stripping it?

A. Taking off any connecting gear. [1566—1478]

Q. What else did they do with it?

A. I believe they raised it upon blocks.

Q. What else did they do?

A. The rest of the work I could not give in detail. They did some little work to it, I don't know just what.

Q. Did they not begin to remove the bulkhead?

A. Not at that time, no.

Q. Not at that time? A. No.

Q. When did they remove that bulkhead?

A. They cut a piece out of the bulkhead when they found it necessary to remove one piece of the inter-

(Testimony of Charles W. Saunders.)

mediate shafting.

Q. Did they not remove part of the bulkhead preparatory to taking the crank-shaft out?

A. They did not.

Q. They did not? A. No, sir.

Q. Would you wish to set up your recollection in that respect against that of the engineers who were at work upon it? A. Yes, sir.

Q. Did you speak to anybody concerning the necessity of taking out the crank-shaft during the progress of that work?

A. That was the main topic of conversation up to the time that it was found unnecessary.

Q. With whom did you talk on that subject?

A. With probably every one that was working on the job, that part of the job.

Q. Name somebody. That is too indefinite for any purpose in this case.

A. Mr. Williamson was the only one working there that I knew by name.

Q. Did you talk to him on that subject?

A. Frequently.

Q. What did you have to say to him and what did he have to say to you?

A. I asked whether it would be necessary to take it out several times; he said he would not be able to tell until they [1567—1479] saw it. I think they lined it up in some way and used calipers on it; some method that they have of determining the correctness of the shape.

Q. What would be the purpose of taking it out,

(Testimony of Charles W. Saunders.)

Captain Saunders?

Mr. McCLANAHAN.—I object to the question on the ground that the witness has not qualified as an engineer to answer the question.

Mr. FRANK.—He seems qualified on every subject.

The WITNESS.—Thank you.

Mr. McCLANAHAN.—I think he is holding his own.

A. That is work that I am not familiar with.

Mr. FRANK.—Q. Then you don't know as you were watching this work what the purpose would have been to take it out, and what purpose was subserved by not taking it out, do you? A. I do not.

Q. You don't know anything about it?

A. I don't know anything about the mechanical part of it.

Q. All you know about it is it was not taken out?

A. I know it was deemed not necessary to take it out by those familiar with the work, and Captain Matson wished to be informed of the decision as soon as possible. That was the reason for my great interest in it.

Q. And that is all you were interested in in the engine-room? A. At that particular time.

Q. At any other time was there anything else you were interested in in the engine-room?

A. I was interested in a general way in the way the work was progressing, and was very anxious to get the ship out on the specified date, so as to enable her to keep her schedule.

(Testimony of Charles W. Saunders.)

Q. Did you keep in touch with the changes that were being made? [1568—1480]

A. With some of the changes that I understood, yes.

Q. Not with all of the changes?

A. There were some that I was not familiar enough with in a mechanical way to consider.

Q. And that Captain Klitgaard took care of?

A. Mr. Klitgaard was the chief engineer.

Q. I mean Mr. Klitgaard, the chief engineer, took care of that?

A. He was the one who judged that work.

Q. And when any changes were made from the original specifications Mr. Klitgaard determined those changes; is that right?

A. Mr. Klitgaard recommended those changes.

Q. His recommendations were carried out, were they not? A. I believe they were.

Q. In every instance? A. I think so.

Q. Were you ever present during the discussion that arose over some of these changes in the engineer's department? A. Yes, sir.

Q. Now, who else took part in those discussions?

A. One discussion over the substitution of a balance cylinder in the place of work on the low pressure cylinder, Mr. Williamson, Mr. Klitgaard and myself were present at.

Q. Was Mr. Putzar present?

A. I don't recollect that Mr. Putzar was present.

Q. Was not Mr. Putzar present at most, if not nearly all, of the discussions with respect to changes

(Testimony of Charles W. Saunders.)

in the department?

A. That I could not say. He was around the job considerable.

Q. Not, only was he present but did he not advise upon the subject together with Mr. Klitgaard and yourself?

A. He sometimes talked about the changes.

Q. At those discussions, Captain Saunders, was not also Mr. Siversen, the foreman on the engineer's job, present taking part [1569—1481] in the discussion? A. I don't recollect Mr. Siversen.

Q. You would not undertake to say that he was not present taking part in it?

A. I would not say that he was not present.

Q. Were you present at the discussion held between Mr. Klitgaard and the representatives of the United Engineering Works whomsoever it may have been, respecting the removal of the crank-shaft where it was determined whether or not it should be removed? A. I was not present.

Q. So that you do not know what that discussion was? A. No, sir.

Q. And you don't know what determined them not to remove it?

A. When I arrived over there one evening—I believe it was one evening or in the morning, I forget which—Mr. Klitgaard told me that they had found it was unnecessary to remove that shaft.

Q. That is all you know about it?

A. That is all.

Q. Now, let us come back to the occasion, Captain

(Testimony of Charles W. Saunders.)

Saunders, when you said on your direct examination that you were present during a conversation between Mr. Gray and Captain Matson, when you say that Captain Matson accepted Mr. Gray's bid and tell us again what that conversation was.

A. Captain Matson told Mr. Gray that he was going to give him the job, but he still thought the bid was too high, but inasmuch as there was a doubt about the crank-shaft being taken out, that he would follow up the suggestion as made by Mr. Gray and put a timekeeper on, so that he would get the benefit of any deduction in price from the original bid caused by the not taking out of the crank-shaft.

Q. And that was all the conversation?

Mr. McCLANAHAN.—The witness has not had a chance to finish, Mr. Frank. [1570—1482]

Mr. FRANK.—If he has not, he can go on now.

A. Then there was some talk about the timekeeper, I believe.

Q. Is that all?

A. That is about the substance of it.

Q. That is all that you remember at this time of the conversation between them; is that right?

A. I think that is all that I remember just at present.

Q. Why do you say "just at present"?

A. Because that is all that I remember just at present.

Q. This morning you testified that either at that conversation or some other conversation Gray figured \$2,000 would be the cost of the removal of the crank-

(Testimony of Charles W. Saunders.)

shaft. Do you remember that?

A. Yes, sir, that was the estimated cost.

Q. When was that conversation?

A. I think it was either at our conversation when he rejected the first bid—I think it was at this conversation.

Q. What did Mr. Gray say? Give us his language as near as you can on that subject.

A. When the captain asked him about what he figured would be the deduction in case it was unnecessary to take that crank-shaft out Mr. Gray said in the neighborhood of \$2,000.

Q. \$2,000? A. Yes, sir.

Q. Was anything further said about it?

A. I don't remember if there was anything further said.

Q. Now you have just answered me after my asking you why you said you believed that was all the conversation at the present time, that there was some conversation at the time you claim the bid was accepted concerning the timekeeper. Do you recall any further conversation concerning the timekeeper?

A. Only at the one conversation; either that or the time the other bid was rejected, the captain asked Mr. Gray if he knew of [1571—1483] anybody competent for that position. Mr. Gray mentioned several names, only one of which I remember. That was Mr. Putzar.

Q. And what was further said about appointing a timekeeper? A. Nothing that I remember.

Q. At any conversation that you were present at

(Testimony of Charles W. Saunders.)

was there nothing further said?

A. Nothing further at any conversation between Mr. Gray and Captain Matson.

Q. Except as I understand you Captain Matson said that he would put on a timekeeper to keep time on the question of the crank-shaft; is that right?

A. So as to get the benefit of any deduction in case the crank-shaft was not taken out.

Q. That was all that was said?

A. That was all I think at that time in my presence.

Q. Well, at any time that you have any recollection of or that you were present was anything further said on that subject? A. Not that I recollect.

Q. You have had considerable experience, have you not, in the repair of these vessels?

A. I have since that time.

Q. Have you had any extensive repairs on any vessel since that time?

A. Not while I was supervising the job.

Q. Not while you were supervising?

A. No, sir.

Q. Have you ever upon any other occasion appointed a timekeeper? A. Never.

Q. As an ordinary rule for a small matter, does not the engineer take care of that matter of time?

A. Not now.

Q. I do not mean now. I mean generally in the matter of repairs on ships.

A. Previous to that contract the engineer usually

(Testimony of Charles W. Saunders.)

looked out for small matters that were not contracted for.

Q. That is he kept the time?

A. He kept track of the time. [1572—1484]

Q. You understand that to be the general rule, do you not, Captain?

A. I have no idea about how it is run in other countries.

Q. And now I understand that your work is all done on contract, is that right? A. I believe so.

Q. And you do not employ any timekeepers at all?

A. I don't know of any instance.

Q. By the way, did I understand you to say this morning that you knew Mr. Putzar before this transaction? A. I never met him before.

Q. Did you come in contact with him frequently during this transaction?

A. I saw him frequently.

Q. Would you undertake to say that he was otherwise than a man of the highest integrity?

Mr. McCLANAHAN.—I object to that as immaterial.

Mr. FRANK.—We will see whether it is or not.

A. I have no reason to suppose either one way or the other.

Q. You have no reason to suppose either one way or the other. By that you mean you have no reason to suppose that he was not a man of the highest integrity?

Mr. McCLANAHAN.—I object to that as immaterial.

(Testimony of Charles W. Saunders.)

A. From any dealing I had with him I don't think that I would be in a position to form any particular opinion of him. I simply saw him as a timekeeper and afterwards as an engineer. Personally I did not like him.

Mr. FRANK.—Q. You did not like him personally? A. No, sir.

Q. Go on with the rest of it.

A. I don't think there is anything else.

Q. Now, with reference to these specifications that we have had here Captain. You say that you saw Mr. Klitgaard dictate the specifications to a stenographer? [1573—1485]

Mr. McCLANAHAN.—I object to that. He did not say he saw him dictate them.

A. I saw him give them to a stenographer.

Mr. FRANK.—Q. Oh, you saw him give them to a stenographer? A. Yes, sir.

Q. And that was at what time?

A. That was after his arrival in San Francisco in July.

Q. In July? A. Yes, sir.

Q. Is that the first time they were given to a stenographer in the office?

A. The first time to my knowledge.

Q. And he arrived on what date, at that time?

A. I should say about July 20th.

Q. Did you not say this morning that she arrived on July 22d?

A. I don't think I said that; I might have said about the 22d. But it was a day or two previous

(Testimony of Charles W. Saunders.)

to that I believe.

Q. Well, and when do you say the specifications were prepared?

A. A day or so after her arrival here.

Q. That would make that about July 22d, would it not? A. About July 22d.

Q. These were the first specifications that were written, were they not? A. Yes, sir.

Q. After the specifications were written who delivered them to the different iron works?

A. I could not say whether they were mailed or delivered by messenger.

Q. Whether mailed or delivered by messenger, who mailed them, or who sent them by the messenger?

A. Captain Matson would say who to send them to.

Q. That is not what I am asking you, Mr. Saunders. Who sent them out?

A. That I could not say. [1574—1486]

Q. You did not, did you?

A. I don't recollect that I did.

Q. In the ordinary course you would not have the handling of that end of the transaction, would you? A. No, sir.

Q. And you would not undertake to say that you sent out any specifications whatsoever relating to these repairs? A. Not personally.

Q. Nor supervise the sending out of any specifications?

A. That might be possible under Captain Matson's direction at that time.

(Testimony of Charles W. Saunders.)

Q. I am not asking you what might be possible; I am asking you what was the fact in this instance?

A. In that particular instance I do not recollect who sent them out.

Q. You do not recollect who sent them out?

A. No, sir.

Q. You were shown this morning two sets of these specifications which differed in some respects, one from the other, and you attempted to account for the difference by saying there was a postponement. Was there more than one postponement?

A. I could not say. I don't think there was.

Q. If there should be other specifications that differ again from both of these how would you account for that?

Mr. McCLANAHAN.—I object to that question as calling for the conclusion of the witness on a matter that is absolutely foreign to his evidence, and utterly impossible for him to account for something he does not know anything about.

Mr. FRANK.—Is that a legal objection or an instruction to the witness?

Mr. McCLANAHAN.—It is an objection that the Court would sustain, if he heard it. He never would allow such a question in the world. [1575—1487]

Mr. FRANK.—Then he would not have allowed your examination this morning.

A. I shall have to ask to have that question repeated.

Mr. FRANK.—Read the question, Mr. Reporter.

(The Reporter reads the question as follows: “Q.

(Testimony of Charles W. Saunders.)

If there should be other specifications that differ again from both of these, how would you account for that?"')

A. I don't think I would attempt to account for it. [1576—1487½]

Q. You would not be able to, would you, Captain?

A. I could not account for it.

Mr. McCLANAHAN.—Q. You would have to see the specifications, would you not?

A. I certainly would.

Mr. McCLANAHAN.—Why don't you show him the specifications, Mr. Frank? You should treat the witness fairly.

Mr. FRANK.—Oh, I will treat him fairly. If you only treated my witnesses the same as I treat yours you would be very much less open to criticism. Now, let us have the last question and answer read. (Question and answer read.) Now, I show you Respondent's Exhibit Christy "C," and ask you to compare it with the other two that you have testified to and when so compared, explain, if you can, the difference in those specifications.

A. That is simply a list of work, I should judge, furnished so as to make a number of more copies.

Q. A list of work furnished to whom?

A. That is a list of work according to the specifications. We were called on several times for more copies after the work was commenced.

Q. Why did you not, if that was the case, furnish an exact copy?

(Testimony of Charles W. Saunders.)

A. I think that is exact with the exception of the latter paragraph.

Q. With the exception of the latter paragraph?

A. Yes.

Q. What has the last paragraph on Respondent's Exhibit Christy "C" got to do with the list of work?

A. The last paragraph is not in here.

Q. The last paragraph that is in there I am referring to?

A. I am referring to the last paragraph in the other.

Q. I understand, Captain, but I am asking you what has that [1577—1488] last paragraph in that exhibit got to do with the list of work?

A. The time limit is one thing and light and water to be furnished free is another thing.

Q. When you say "we" to whom do you refer?

A. In what do you mean, the expression "we"?

Q. You said "we" were asked for lists of work.

A. The Matson Navigation Company.

Q. That is rather an indefinite term. Were you personally ever asked for it?

A. I was asked by Mr. Klitgaard for more copies.

Q. Were you ever asked by any member of the United Engineering Works for more copies?

A. I could not say.

Q. Then, when you say you were asked for lists of work all you have any recollection of or what you refer to is lists of work you were asked by Mr. Klitgaard for?

A. Yes, he said that some of the foremen—

(Testimony of Charles W. Saunders.)

Mr. FRANK.—I don't care what he said.

Mr. McCLANAHAN.—Just wait a moment. Let him answer.

A. (Continuing.) That some of the foremen did not have copies of the specifications and he asked me for more.

Mr. FRANK.—Q. I notice, Captain, that you use the term "list of work." How do you happen to make use of that term?

A. The work to be done on a ship is commonly called a list of work, and it is recognized as going to be done under some certain specifications.

Q. Why do you use the term "list of work" instead of the word "specification," when, in this instance, the document you are speaking of is one and the same thing?

A. I am in the habit of using both terms.

Q. I understand you to say that you never before had any [1578—1489] work of this kind done that you had to supervise or attend to?

A. That is right.

Q. When did you form that habit?

A. Since I have been with the Matson Navigation Company.

Q. Have you read over the testimony in this case?

A. I have not.

Q. Have you discussed it with counsel in this case?

A. I have not.

Q. I am right, now, am I not, Captain, in the conclusion that you had nothing whatsoever to do with sending out these specifications for bids?

(Testimony of Charles W. Saunders.)

A. I might have sent them out myself; I do not recollect.

Q. You do not recollect? A. No.

Q. And you had no recollection upon that subject this morning either, did you? A. I was not asked.

Q. Well, whatever you may have testified to this morning upon the subject of sending out these specifications or delivering them to the different iron works for bids, that testimony was given without any knowledge or thought that you yourself did it?

A. Exactly.

Q. And you do not know who did do it?

A. I think—I am pretty sure that I delivered the Union Iron Works specifications in person.

Q. And that is the only one?

A. That is the only one that I remember I delivered.

Q. Then you would not know of your own knowledge what the specifications were that were delivered to the United Engineering Works for bids, would you?

A. I do not think I could say that I would know that exact copies were given to these other people of my own personal knowledge. [1579—1490]

Q. Referring now to “Respondent Saunder’s Exhibit No. 1,” when did you see that particular paper last before being examined this morning?

A. I should say about two years ago.

Q. You have not seen that paper then from two years ago until it was presented to you here this morning at the examination when we were all pres-

(Testimony of Charles W. Saunders.)

ent; is that right?

A. I will withdraw that answer, I think.

Q. Very well. Give us whatever other answer you think is proper.

A. I very probably saw this a year ago,

Q. You probably saw it a year ago? A. Yes.

Q. Why do you say probably?

A. Because I saw these papers before they were sent to the counsel; in fact, I think I had them in my desk.

Q. You only think so?

A. I know I had the specifications in my desk.

Q. Do you know you had that document in your desk?

A. I don't know that I had that exact document.

Q. Is there anything upon the face of that document which enables you to identify it as a document that you had ever seen before?

Mr. McCLANAHAN.—That is, you refer to the physical paper, do you, Mr. Frank?

Mr. FRANK.—Just as it stands there, that particular paper.

A. It is an exact copy of the ones that were sent out.

Q. Do you remember the details of the ones that were sent out without having examined them within a year?

A. I certainly remember the latter part of it.

Q. Is that the only part of it you remember?

A. No, I remember that crank-shaft; I remember several of them there. [1580—1491]

(Testimony of Charles W. Saunders.)

Q. Well, what do you remember there, when you say you remember the crank-shaft—do you remember the detail that is set forth in that document relating to the crank-shaft?

A. Only the general detail.

Q. Well, what is the detail?

A. The one that calls for the removal of the crank-shaft.

Q. What does it say respecting the crank-shaft?

A. It says the crank-shaft is to be removed to the shop and placed in a lathe and the thrust-shaft would have to be coupled to it, and all the line shafting would have to be trued up. That is about all I can tell you on that particular paragraph.

Mr. McCLANAHAN.—I would like to have it appear of record that the witness is making his statement without referring to the paper.

Mr. FRANK.—Certainly.

Q. And that is all you can remember about that?

A. About that paragraph.

Q. Is that the part of that specification which you have just mentioned as the subject matter of the conversation between Mr. Gray and Mr. Klitgaard and Captain Matson, respecting the crank-shaft not having to be taken out?

A. That is the same crank-shaft referred to.

Q. I am not saying about the same crank-shaft, I am talking now about what you have said as the part of the specifications relating to the crank-shaft that would not have to be carried out?

(Testimony of Charles W. Saunders.)

A. Removing the crank-shaft to the shop is the part.

Q. Removing the crank-shaft to the shop is the part?

A. And the work to be done on it after it was in the shop.

Q. And that is all there is in that specification that was the subject of conversation between these parties? [1581—1492]

A. At which I was present; that was the main item of the specifications, the only one upon which there was apparently any doubt.

Q. Now, I show you Respondent Siverson Exhibit "A," and ask you when you saw that document last before your examination here this morning?

A. I really could not say.

Q. Well, did you ever see it before?

A. I have probably seen one, either that one or one exactly like it before.

Q. Then you are not prepared now to say that you saw that particular document before?

A. Not that particular piece of paper.

Q. And how long has it been since you have seen one that you think is like that?

A. That I should say is about two years.

Q. And you did not go over this matter with counsel before your examination here? A. No.

Q. Did you go over any of these matters with counsel or with anyone before your examination here?

A. None of those specifications.

Q. How long has it been, Mr. Saunders, since you

(Testimony of Charles W. Saunders.)

saw what you deem to be a copy of Siverson's Exhibit "A"?

A. I do not recollect seeing that inside of say 15 months.

Q. Inside of 15 months? A. Yes.

Q. What was the occasion upon which you saw what you deem to be a copy 15 months ago?

A. When there was some reference to the case; I forget now what it was. I had some things in my desk. I am under the impression that our first counsel wanted some papers.

Q. What did you do then with respect to the copy of such specifications?

A. If I had one I probably passed it [1582—1493] over to Mr. Gregg.

Q. Now, you are dealing entirely with suppositions, Captain. Do you know as a fact you did have that one, or did not have that one?

A. I don't know for a fact that I had an exact copy of that exhibit.

Q. What is there on this exhibit, Siverson Exhibit "A," that enabled you this morning to identify it as an exact copy of specifications sent out as you say to different bidders on this work?

A. The general work contained in it and the finishing paragraphs here.

Q. That is all, is it? A. Yes.

Q. Was it sent out to them on the date that it bears? A. I could not say.

Q. Was any one of them sent out on the date they bear?

(Testimony of Charles W. Saunders.)

A. I believe they were all sent out at the same time, on the same day, whatever date that was.

Q. On the same day? A. I believe so.

Q. Did you keep an original on file in the office of any of these specifications?

A. I don't know whether there was any on file or not. I had one in my desk until I turned it over to Mr. Gregg, I think.

Q. In your supervision of the work that was being done on board this vessel, do you remember the work that was done on the tank-top? A. Yes.

Q. What was it that was done on the tank-top?

A. They put a number of new plates on one side in the No. 4 tank-hold.

Q. Is that all that was done there on that tank-top?

A. I could not tell you just the extent of the work that was done, but there were a number of new plates put in. Of [1583—1494] course, the tank had to be cleaned out before they could work there.

Q. Do you mean to have us understand that the work was confined to new plates on one side?

A. On one side.

Q. That is all that you remember about?

A. The detail of the work I do not remember but it was new plates, and possibly a few new angles.

Q. And you want us to understand that it was confined to the plates on one side?

A. On one side altogether.

Q. That is all that you remember of?

A. I know it was only on one side.

(Testimony of Charles W. Saunders.)

Q. You know it was only on one side? A. Yes.

Q. How far did it run on that side, fore and aft?

Mr. McCLANAHAN.—Do you mean the new plating, Mr. Frank?

Mr. FRANK.—Yes.

A. On the forward end of the tank-top it ran to within several feet of the bulkhead, I believe up to the butt of the last plate forward, and I believe that the plate underneath the aft bulkhead was not disturbed.

Q. That is the extent of your knowledge of that work? A. That is the extent of my knowledge.

Q. How far does that tank-top run?

A. That particular tank-top was simply under the No. 4 hold; it is divided off from the No. 3 tank by a bulkhead.

Q. How far aft does it run?

A. I think it runs right to the after end of the ship. The No. 4 hold is very close to the after end of the ship.

Q. Was it renewed clear to the after end of the ship? A. No.

Q. It was not? A. No.

Q. Are you certain of that, Captain? [1584—1495]

A. I am positive of that. They could not renew them clear to the after end of the ship without removing the bulkhead, and the bulkhead was not removed.

Q. That is your reason for thinking it was not renewed to the after end of the ship?

(Testimony of Charles W. Saunders.)

A. I know it was not renewed.

Q. Do you know where Mr. Putzar is now?

A. I do not.

Q. Have you made any attempt whatsoever to find him? A. No, I have not made any attempt.

Q. Do you know whether anybody has made any attempt on behalf of the Matson Navigation Company to find him? A. No, I have no idea.

Q. Why was it, Mr. Saunders, when Captain Matson questioned the correctness of this bill, that you did not show him the report which you say you had from Mr. Klitgaard on the work?

A. Captain Matson did not care about the report on the work, he wanted a report on the time.

Q. He did not care about a report on the work; he wanted a report on the time, did he? A. Yes.

Q. You got this book marked "Curtis Exhibit No. 4"—do you know what that is?

A. That is the time-book, I believe.

Q. Don't you consider that a report on the time?

A. I don't know anything about that, Mr. Frank.

Q. Well, as a matter of fact, don't you know that that contains every item of time, every detail both of men who worked on there, the hours worked and the classification?

Mr. McCLANAHAN.—I object to the question upon the ground that it does not contain every item of detail of the time worked on the job.

Mr. FRANK.—Oh, you are trying to make a distinction now between the time kept on the ship and the time kept in the shop. [1585—1496]

(Testimony of Charles W. Saunders.)

Mr. McCLANAHAN.—It is very easily made.

Mr. FRANK.—Q. Well, does not that contain every item of time on the ship work?

A. I don't know.

Q. You never examined to find out?

A. I don't think that my opinion would be worth much if I did because it is the first and only time-book I have ever seen.

Q. Did you pass that up to Captain Matson at the time? A. I told him I had the time-book.

Q. You told him you had the time-book?

A. Yes.

Q. What did he say?

A. He said he wanted a report as to the time by Putzar.

Q. Did you not tell him that that was Putzar's report on the time?

A. No, I told him that was the time-book Putzar had given me.

Q. But he did not look into it and examine it?

A. I don't know whether he examined it or not.

Q. When this bill came in, Captain, was it referred to you?

A. We did not discover that bill for quite a while after it did come in and then it was referred to Captain Matson by wire.

Q. By "we" who do you mean, when you say that we did not discover that bill for quite awhile after it did come in?

A. As I remember it, Mr. Curtis came in to the office after some money on account of the bill. Mr.

(Testimony of Charles W. Saunders.)

Gregg inquired from different ones in the office if they had seen a bill from the United Engineering Works; he inquired of me also. We found it finally in a drawer into which the bills were thrown in the course of the month and then sorted over at the end of the month. That was the first time I had seen it, or anybody else.

Q. And you do not know then when the bill was really first presented at the office? A. No.
[1586—1497]

Q. It might have come in on the date which it bears, September 27th, and been lying there from that time on?

A. It could not have come in in September, otherwise it would have been found and paid—no, not paid, but it would have been found and gone in with the other September bills.

Q. You are assuming that the bill you could not find in September would have been found if it had been in there in September; that is what your argument amounts to.

Mr. McCLANAHAN.—I object to that. There is no such inference to be drawn from his testimony at all.

Mr. FRANK.—Oh, let the witness take care of himself, Mr. McClanahan.

A. At that time the bills were all gone over at the end of every month, they were taken out of that drawer.

Q. Who goes over them? A. The bookkeeper.

Q. Don't you go over them?

(Testimony of Charles W. Saunders.)

A. Not until after the bookkeeper has had them.

Q. The bookkeeper goes over them and then passes them to you? A. He passes some bills to me.

Q. What do you mean by "some bills," those which have to do with the repair of vessels?

A. No, bills that are in my department, supplies for the ships.

Q. Are not bills of that nature in your department? A. Not now.

Q. But I mean then?

A. At that time bills of that nature were passed up to Captain Matson.

Q. Were not other bills relating to this work passed up to you at that time for your O. K.?

A. In Captain Matson's absence some of the bills were. [1587—1498]

Q. Well, Captain Matson was absent at that time, was he not? A. Yes.

Q. And it would have been your duty to go over that bill?

A. If he had wired me instructions I would have gone over it.

Q. Did you ever go over that bill with Captain Matson?

A. I never went over it with Captain Matson, no.

Q. You never went over it with him? A. No.

Q. He never asked you anything about the work specified here, whether it was performed or how it was performed, or anything about it?

A. He asked me how it happened to be such a tremendous big bill.

(Testimony of Charles W. Saunders.)

Q. Is that all he said to you?

A. That is the sum and substance of that conversation.

Q. Did you then go into details with him, or did you give him just as short a reply as the question was? A. I told him I did not understand it.

Q. That is all you said?

A. That is all that I said about that bill.

Q. And he did not ask you about any of the details of it at all, did he?

A. I do not remember that he did.

Q. When he asked you that question, did it not occur to you that the report which you say you got from Mr. Klitgaard, the chief engineer, would serve as an answer or an explanation? A. No.

Q. It did not occur to you? A. No.

Q. You did not say anything to him about it?

A. We did not expect to get the bill in that shape.

Q. Answer my question: you did not say anything to him about it? A. About what? [1588—1499]

Q. About the report?

A. I don't know that I spoke to him at that time about it.

Q. Did you ever speak to him about it?

A. I told him I had a report from Mr. Klitgaard.

Q. And that is the time he said he did not want to see it? A. He was busy at that time.

Q. Well, what reply did he make, if he was busy?

A. That he had not time to look at it, probably.

Q. You say "probably"; do you wish us to understand that that is what he said, or that he probably

(Testimony of Charles W. Saunders.)

said that? A. He probably said that.

Q. Then you are not testifying that he said that?

A. No.

Q. You do not remember what he did say?

A. I could not say the exact words. I know that he did not see it.

Q. You do not know the substance of what he said, do you? A. Yes.

Q. What was it? A. That he did not see it.

Q. I mean what he said?

A. I told him I had the report, and I am very sure that he did not have time to look at it then.

Q. He never asked you afterwards for it either, did he? A. I don't remember that he did.

Mr. FRANK.—It is now 4:15 and I would like to have this go over now until to-morrow morning. I cannot intelligently continue the cross-examination. I will have an opportunity to look over this testimony. It will save a great deal of record.

Mr. McCLANAHAN.—I am very much concerned to finish the case of the respondent as soon as possible so as to come within the order of the Court. It seems to me we ought to be able to work until 5 o'clock every day.

(An adjournment was here taken until to-morrow, Wednesday, *October 31st*, 1911, at 10 A. M.)
[1589—1500]

(Testimony of Charles W. Saunders.)

Wednesday, November 1st, 1911.

CHARLES W. SAUNDERS, recalled.

Mr. FRANK.—I have finished with the witness.

Redirect Examination.

Mr. McCLANAHAN.—Q. Captain Saunders, I want to ask you just one question. Was the request ever made to the United Engineering Works for a segregation of their bill as it was presented originally? A. Yes, sir.

Q. Was that request complied with?

A. Never to my knowledge.

[Testimony of C. C. Kinsman, for Respondent.]

C. C. KINSMAN, called for the respondent, sworn.

Mr. McCLANAHAN.—Q. What are your initials, Mr. Kinsman? A. C. C.

Q. How old are you? A. 34.

Q. What is your business?

A. Marine engineer and machinist.

Q. What is your present occupation?

A. Marine engineer.

Q. Are you connected with any ship?

A. Not at present.

Q. Are you not chief engineer of the “Hilonian”?

A. Not at the present time, no.

Q. What do you mean by that?

A. I have a man in my place as chief engineer.

Q. He is a substitute, is he not? A. Yes, sir.

Q. You are, then, chief engineer of the “Hilonian”?

(Testimony of C. C. Kinsman.)

A. Well yes, I am looking after certain work for them now.

Q. For who now?

A. For the steamer "Hilonian."

Q. Are you not in the employ of the Matson Navigation Company? A. Yes, sir. [1590—1501]

Q. How long have you been chief engineer of the "Hilonian"?

A. I was chief of her in the latter part of March.

Q. That is not what I asked you. I asked you how long you were chief of her?

A. About five months in all.

Q. Mr. Kinsman, you have relinquished the chief engineership solely for the purpose of attending the hearing in this case, have you not?

A. Yes, sir, but I was chief engineer of her on a previous occasion.

Q. For how long?

A. For about a month and a half.

Q. And after this case is concluded and your evidence is given you expect to go back into her as chief engineer? A. Yes, sir.

Q. Prior to acting in the capacity of chief engineer, had you any connection with the "Hilonian"?

A. I was first assistant.

Q. How long were you first assistant engineer?

A. From May, 1909, to July, 1910, and then from the latter part of April, I think, up to—

Mr. FRANK.—Q. April of what year?

A. This year; up to about four months ago.

(Testimony of C. C. Kinsman.)

Something like that. I don't remember just the date.

Mr. McCLANAHAN.—Q. After leaving the "Hilonian" at the time you were first assistant engineer did you still remain in the employ of the Matson Navigation Company? A. Yes, sir.

Q. In what work, in what capacity?

A. I was appointed chief engineer of the ship.

Q. Of what ship?

A. The steamship "Hilonian."

Q. Did you not do some work down in Honolulu for the Matson Navigation Company?

A. That was between the dates when I was down there for eight months. [1591—1502]

Q. When was that?

A. I left here in the latter part of July, or the 1st of August.

Q. What year?

A. 1910; and returned in March of this year.

Q. And while there what were you doing?

A. I was chief engineer of the "Intrepid."

Q. How long have you been in the employ of the Matson Navigation Company?

A. From May, 1909, to date.

Q. Do you remember the trip of the "Hilonian" when she arrived in this port in the year 1909, on an occasion when Mr. Christy of the United Engineering Works visited the ship in the harbor before she docked?

A. I remember Mr. Christy coming down in the .

(Testimony of C. C. Kinsman.)

engine-room when we were in quarantine.

Q. Then your answer to my question is yes?

A. Yes, sir.

Q. What did Mr. Christy do down in the engine-room? A. He looked around.

Q. What was he there for, do you know?

A. I could only judge from the questions he put to me.

Q. Well, I have asked you what he did.

A. He asked me if I thought the crank-shaft was sprung or bent. His questions seemed to point to the crank-shaft particularly.

Q. Tell us the whole of the conversation. What was done and said?

A. Well, I don't remember the exact conversation, but when he asked me whether or not I thought it was sprung I told him no. He asked me for my reasons and I gave them to him.

Q. What else did he say?

A. That is the only thing that I remember.

Q. Did he see the engine in operation?

A. Yes, sir.

Q. How long was he down there?

A. Well, I should say at the very least 15 or 20 minutes. [1592—1503]

Q. What was his opinion in regard to the crank-shaft after he had seen it in operation?

Mr. FRANK.—If he expressed it. What did he say?

A. I don't know whether he expressed it directly

(Testimony of C. C. Kinsman.)

or not, but he gave me the idea that he thought it was sprung.

Mr. McCLANAHAN.—Q. How did he take your explanations which were given him as a basis for your reasons?

A. I think he tried to—he did argue against it.

Q. What was the result of the argument?

A. Well, I think I created a doubt in his mind.

Q. Before he left the engine-room?

A. Yes, sir.

Q. A doubt in his mind as to his belief?

A. Yes, sir.

Q. Did you know Mr. Christy at that time to be connected with the United Engineering Works?

A. Yes, sir.

Q. Did you know that at that time repairs were contemplated? A. Yes, sir.

Q. Do you remember when that was, Mr. Kinsman, that Mr. Christy visited the ship?

A. I cannot say now whether it was the trip that we laid up or whether it was the previous trip. It was one or the other.

Q. When was the ship laid up for repairs?

A. In August, 1909.

Q. Do you know whether any specifications were prepared of the work to be done to the "Hilonian" at that time?

A. I was furnished a copy that trip.

Q. What time were you furnished a copy?

A. I don't recall whether it was just before going over to the yard or just going over to the yard. It

(Testimony of C. C. Kinsman.)

was about that time—between the arrival and going over to the yard, I think.

Q. Who furnished you the specifications?

A. Mr. Klitgaard, the chief engineer. [1593—1504]

Q. Have you got that specification now?

A. No, sir.

Q. I hand you the exhibits, “Saunders No. 1,” “Siversen’s A” and “Christy’s C,” and ask you to examine those exhibits and see if you can identify the work on them, or called for by them. Take your time about examining them.

A. That seems to me more like the copy that I received with one exception (handing).

Q. You refer now to “Saunders Exhibit No. 1”?

A. Yes, sir; with the exception that this last sheet was not included.

Q. That is sheet No. 3?

A. Yes, sir; sheet 1 and 2 seems to me to be the same with the exception of the 26 days.

Q. What did your copy have on?

A. If I remember correctly, it was 25 days.

Q. You perhaps do not know that you have not answered my question. I wanted you to examine the work called for by those lists.

A. I have done it.

Q. Can you identify the work called for by the three lists? A. Yes sir; that is the work.

Q. When you say “that is the work,” what do you mean? A. That was called for at that time.

Q. On your specifications that you had?

(Testimony of C. C. Kinsman.)

A. Yes, sir.

Q. So that the work called for in your specifications is identical with the work called for in those three specifications? A. Yes, sir.

Q. And you think that your list was more like "Saunders Exhibit 1"? A. Yes, sir.

Q. With the exception of the last page?

A. Yes, sir.

Q. Why do you say that? What is there on it that makes you identify it?

A. My copy does not contain the third page at all.
[1594—1505]

Q. Yes. Why do you identify that as more nearly resembling your copy?

A. One reason is the paper is nearly about the same size, and as I remember the work on that job, it was practically the same as contained in these two sheets.

Q. Is the size of the paper the only thing that makes your recollection— A. No.

Q. Wait until I finish my question—that makes you identify "Saunders 1" as being more nearly resembling the one that you had, aside from the work itself enumerated?

Mr. FRANK.—Of course, Mr. McClanahan, all this examination is subject to objection. It is immaterial what specifications he had. He had no connection with us whatsoever to bind us to any particular specifications. The Matson Navigation Company is at liberty to give anything it pleases to its own employees.

Mr. McCLANAHAN.—You are not even suggest-

(Testimony of C. C. Kinsman.)

ing, Mr. Frank, that your employees did not have copies of these specifications.

Mr. FRANK.—I am not making any suggestions at all, one way or the other, Mr. McClanahan. There have been some things testified to here yesterday that if I were to make suggestions about would probably surprise you.

Mr. McCLANAHAN.—You seem to forget that one of the exhibits that the witness is examining was produced by one of your witnesses, an employee of the United Engineering Works.

Mr. FRANK.—That is all right, it was not produced by one of our witnesses. You are referring to the “Siversen Exhibit”; that was produced by yourself and taken out of your own file. [1595—1506]

Mr. McCLANAHAN.—What about Christy?

Mr. FRANK.—That was produced from my files and not by Siverson.

Mr. McCLANAHAN.—It was identified by Christy, nevertheless.

A. I don't know but what the size of that paper has some effect on my mind.

Q. I did not ask you that. I asked you if that was the only means you have of identifying “Saunders 1” with yours, the size of the paper?

A. No, sir; the contents of it.

Q. You have already testified that the work on the three is the same as the one which you had. Now, I say, eliminating the question of work is the size of the paper the only thing that makes you connect “Saunders 1” with yours? A. I think it is.

(Testimony of C. C. Kinsman.)

Q. Do you know, Mr. Kinsman, whether any of the employees of the United Engineering Works during the progress of these affairs had copies of these specifications?

A. I saw similar copies in the hands of two of their men.

Q. Who were those men?

A. Mr. Williamson and Mr. Siverson.

Q. Mr. Siverson is present at this hearing here now, is he not? A. Yes, sir.

Q. Do you know when the "Hilonian" went to the yards of the United Engineering Works?

A. On the morning of the 23d of August.

Q. Were you on the ship? A. Yes, sir.

Q. At the time of leaving this side of the bay, were there on board of the ship any of the employees or operators of the United Engineering Works?

A. Yes, sir.

Q. What were they doing?

A. Well, they were working on the donkey-boiler, and I think there were men working in the engine-room. [1596—1507]

Q. What were they doing in the engine-room?

A. I could not recall just now.

Q. Can you recall whether they were doing anything connected with the specifications which you have identified?

A. Well, I know they would not be doing anything outside of the specifications?

Q. Was there nothing to be done to the "Hilonian" outside of the specifications.

(Testimony of C. C. Kinsman.)

A. Not at that time.

Q. What time did you arrive at the yards of the United Engineering Works that morning?

A. In the early forenoon.

Q. That is rather indefinite; that covers a period of six to possibly four hours or three hours. Was it before 9 o'clock or after 9 o'clock?

A. Probably was about that time.

Q. About what time? A. About 9.

Q. Do you know whether any preparations had been made for the receipt of the "Hilonian" at the yards of the United Engineering Works?

A. I don't.

Q. How soon after her arrival did any employees of the United Engineering Works from the yards board the ship?

A. Immediately upon her arrival.

Q. When was work commenced on board the "Hilonian" after her arrival at the yards of the United Engineering Works? A. At once.

Q. What was that work?

A. The first work was the stripping of the reciprocating gear.

Q. Down in the engine-room? A. Yes, sir.

Q. Had you at that time, Mr. Kinsman, known of the question of whether the crank-shaft of the "Hilonian" would have to come out or stay in the ship. Did you know that that was a question undetermined at that time?

A. Yes, sir. [1597—1508]

Q. How long after the arrival of the "Hilonian"

(Testimony of C. C. Kinsman.)

was it before that question was finally determined?

A. I could not say. There was considerable argument *pro* and *con*.

Q. Was it a matter of days? A. Yes, sir.

Q. What was the final determination?

A. That they would not take the shaft out.

Q. Who was it that participated in the conclusion of that question or the argument?

A. Why, I think everybody on both sides had it.

Q. What do you mean by "both sides." Both sides of the ship?

A. No, sir. The United Engineers and the Matson Navigation Company.

Q. Who, representing the United Engineering Works, discussed that matter?

A. I think Gray and Williamson. That is all I can recall now.

Q. And who on the side of the Matson Navigation Company?

A. Well, I was drawn into it. Principally Mr. Klitgaard.

Q. Was any work necessarily done to the crank-shaft or any of the machinery connected therewith that had anything to do with the decision of that question?

A. I think they made a test of the shaft with lines, or tried to.

Q. When you say "they," who do you mean?

A. Representatives of the United, and engineers of the Matson Navigation Company.

Q. Did you participate in that? A. No, sir.

(Testimony of C. C. Kinsman.)

Q. Did you see it done?

A. No, sir, I saw the preparation for it.

Q. What was the preparation?

A. Why, they were putting up [1598—1509]
rigging to put the lines on the shaft.

Q. How extensive an undertaking was that?

A. It might require a little time, but practically no labor.

Q. When you say “a little time,” what do you mean by that?

A. Well, it would depend upon the man who was doing it, how careful he was. One man might run a line in 15 or 20 minutes and another man might take an hour and a half.

Q. Would you limit the time to an hour and a half for the running of that line?

A. I don't know exactly what they did do.

Q. In other words, you do not know how long they took to run the line? A. No, sir.

Q. In your judgment it ought not to exceed an hour and a half?

A. In my judgment I would not try the shaft in that way.

Q. In order to test it for being sprung?

A. Yes, sir.

Q. Was there any work done in order to determine the question of the removal or the nonremoval of the shaft to the shaft itself other than the running of the line which you spoke of? A. No, sir.

Q. Was there any work done to any other part of any of the machinery of the ship? A. No, sir.

(Testimony of C. C. Kinsman.)

Q. Do you remember a bulkhead that was cut in the ship subsequently? A. Yes, sir.

Q. Was that bulkhead cut in order to determine the question of whether the shaft would be removed or not? A. No, sir.

Q. What was that bulkhead cut for?

A. For the removal of the first length in the intermediate shafting.

Q. Is that work called for by the specifications?

A. No, sir, I don't think so. (After examination.)
No.

Q. Why was that intermediate shafting removed?
[1599—1510] A. To face up the coupling.

Q. To face up the coupling on the shaft?

A. Yes, sir.

Q. Was that called for by the specifications?

A. Well, it don't call for it directly.

Q. Well, make what explanation you have got to make.

A. I think from the condition of that coupling, if you make the proper alignment which is called for in the specification it would be necessary.

Q. The proper alignment of what?

A. Of the shafting.

Q. The specifications then called for an alignment of the shafting? A. Yes, sir.

Q. And in order to accomplish that work, was it or was it not necessary to remove to the shop the intermediate shafting?

A. I would not consider it such. Can I make another explanation?

(Testimony of C. C. Kinsman.)

Q. Certainly.

A. It calls for the removal or the cutting of a portion of the bulkhead of that engine-room for the removal of that crank-shaft. You asked me the question whether or not any portion of the bulkhead was removed. There was a portion removed, but not the portion of the bulkhead that was necessary for the removal of that crank-shaft.

Q. It was a different part?

A. It was a different portion of the bulkhead.

Q. That was removed? A. Yes, sir.

Q. The portion of the bulkhead called for under Specification 9 of the contract for the removal of the crank-shaft was not cut? A. No, sir.

Q. Mr. Kinsman, was there at any time during the course of these repairs work unnecessarily done? I mean by that, was there work done which was replaced as unnecessary work after [1600—1511] it had been done? A. I don't recall any.

Q. What was your duty in connection with the work being done on the "Hilonian" while you were at the yards?

A. I was in charge of the crew of the ship; that is, the engine-room department.

Q. You, then, were familiar with the progress of the work in the engine-room? A. Yes, sir.

Q. Does your last answer apply to the engine-room? A. Yes, sir.

Q. As to unnecessary work? A. Yes, sir.

Q. What was the condition of the "Hilonian's" engine-room machinery at the time she went to the

(Testimony of C. C. Kinsman.)

yards? A. She was in need of an overhauling.

Q. Was she in need of anything beyond what was shown by these specifications of work?

A. Possibly a new stack.

Q. She was in need of a new stack? A. Yes, sir.

Q. Was that known at the time she went over there? A. Not to my knowledge.

Q. Do you know that that need was determined after she was over there?

A. Yes, sir, that was determined after she was over there.

Q. Was there anything else that she was in need of?

A. There may have been minor jobs that we came across.

Q. Do you know anything about the needs of new tank-tops?

A. That was needed before we went over there.

Q. That was needed before you went over there?

A. Yes, sir.

Q. Yet, that was not covered in the specifications?

A. No, sir, I knew that was necessary.

Q. What tank-top was in need of the repair work?

A. No. 4 on the port side. [1601—1512]

Q. Was any repair work done to No. 4 on the port side? A. Yes, sir.

Q. What was that work?

A. The plates were renewed. Nearly all of the plates were renewed.

Q. Can you state now what plates were not renewed? A. Yes, sir.

(Testimony of C. C. Kinsman.)

Q. Please do so.

A. That portion of the port side of No. 4 in the shaft-alley was not renewed. The last plate, or the plate next to the after bulkhead was not renewed. The plate next to the forward bulkhead or the bulkhead between No. 3 and No. 4 was not renewed. The margin plate was not renewed.

Q. Can you, Mr. Kinsman, make a sketch of that part of the ship covered by No. 4 tank on the port side? A. Yes, sir.

Q. Please do so.

A. Yes, sir. (The witness draws a diagram.)

Q. You show me the sketch that you have made of the tank-top, do you? A. Yes, sir.

Q. Will you please now do some writing on it. Tell us what this center line is (pointing).

A. That is a fore and aft center line.

Q. Where is the No. 4 tank-top?

A. This is the No. 4 tank-top between these bulkheads and the sides of the ship.

Q. Please put the letters A, B, C and D on the corners of the No. 4 tank-top.

(The witness does as requested.)

Q. Which is the starboard No. 4 tank-top? Place the letter "E" in there.

A. Yes, sir. (The witness does as requested.)

Q. And which is the port? A. Here (pointing).

Q. Place the letter "F" in that. Now, please mark the lines of the shaft-alley, first marking the starboard line. Now, will you please mark the port line. Now, the line under the words [1602—1513]

(Testimony of C. C. Kinsman.)

“shaft-alley” on the starboard side is the shaft-alley bulkhead on that side? A. Yes, sir.

Q. The line just above the words “shaft-alley” on the port side is the port bulkhead of the shaft-alley?

A. This is the port and this is the starboard (pointing).

Q. Answer the question. A. Yes, sir.

Q. What do you mean by fore and aft center-line that runs through the shaft-alley? What do you mean by that?

A. The fore and aft center-line of the ship.

Q. Now, will you please mark the confines of the port side of No. 4 tank with the figures 1, 2, 3 and 4?

A. Yes, sir.

Q. Now, will you please state what work was done on the No. 4 port side tank-top as shown by your diagram?

A. That portion which is not crosshatched.

Q. That is the clear portion in which the letter “F” is found? A. Yes, sir.

Q. In the center? A. Yes, sir.

Mr. McCLANAHAN.—I offer the diagram in evidence and ask that it be marked Respondent Kinsman No. 1.

(The diagram is marked “Respondent Kinsman No. 1.”)

Q. Mr. Kinsman, was any work done on the “Hilsonian” outside of the smokestack, the No. 4 tank-top and the work done under the specifications at this time when she was at the yard?

A. There was work done—

(Testimony of C. C. Kinsman.)

Q. I am not asking you what it was, but if there was work? A. Yes, sir.

Q. Was any work done on the starboard No. 4 tank-top? A. No, sir.

Q. I hand you the libel filed in this case and call your attention to the first schedule of the libel, and ask you if you [1603—1514] have seen the first three pages of that document before (handing).

A. Yes, sir.

Q. I hand you another document, and ask you if you have seen that document before?

Mr. FRANK.—What is the other document?

Mr. McCLANAHAN.—I will give it to you in just a moment. A. Yes, sir.

Q. What is the last document that I have handed to you? A. It is a copy of Schedule 1.

Q. All of Schedule 1, or the first three pages?

A. A copy of the first three pages.

Q. How do you know it is a copy?

A. I believe I checked one with the other.

Q. You believe, or do you know?

A. There are corrections here in my handwriting.

Q. Answer my other question, please. Do you believe or do you know that you checked one with the other? A. I know it.

Q. What are the corrections that you refer to? By corrections you mean there are matters of distinction between the two? A. Yes, sir.

Q. What are they?

A. There is a correction there (pointing).

Q. That cannot go into the record. There is a cor-

(Testimony of C. C. Kinsman.)

rection on the 8th line of the document that I have handed you? A. Yes, sir.

Q. Mr. Kinsman, the paper that I have handed you is simply a subdivision of Schedule 1, the first three pages of it, into 140 items, is it not? A. Yes, sir.

Q. And the only difference between Schedule 1 as contained in the libel and this document which you are now examining, is as follows: on the 8th line, after the expression "L. P. Valve [1604—1515] motion" the word "and" appears on the libel schedule? A. Yes, sir.

Q. And the word "on" on yours? A. Yes, sir.

Q. And you have so designated it? A. Yes, sir.

Q. The 37th item of your paper, after the words "Stern frame" the word "line" appears on the libel schedule and the word "Zinc" on yours, is that correct? A. Yes, sir.

Q. On the 40th line, after the words "steel collar" the word "for" appears on the libel schedule and the word "to" on yours? A. That is right.

Q. And in the 70th item of your schedule you have inserted in pencil after the word "thrust" the word "shaft"? A. Yes, sir.

Q. The word "shaft" appearing on the libel schedule? A. Yes, sir.

Q. In the 97th item of your schedule, after the words "guide brasses of" there appear the letters "L. P." on the libel schedule? A. Yes, sir.

Q. And in yours it is written out as "Low pressure"; is that right? A. Yes, sir.

Q. With those exceptions the paper is identical

(Testimony of C. C. Kinsman.)

with the libel schedule, is it? A. Yes, sir.

Q. With the exception that the items are numbered consecutively from 1 to 140? A. Yes, sir.

Mr. McCLANAHAN.—We offer this in evidence.

Mr. FRANK.—What is the purpose of it?

Mr. McCLANAHAN.—It is going to facilitate the examination of the witness. I ask that it be marked “Respondent Kinsman Exhibit No. 2.”

(The exhibit is here marked “Respondent Kinsman Exhibit No. 2.”) [1605—1516]

Q. Do you know Mr. Fred Gardener?

A. I do.

Q. Do you know Mr. L. Heynemann? A. I do.

Q. Who are those gentlemen?

A. They are both consulting engineers.

Q. Residing in this city?

A. Yes; that is, I know they are doing business in this city, I could not say that they are residing here.

Q. Did you ever have anything to do with Mr. Heynemann or Mr. Gardener, or both of them, with reference to repair work which was done by the United Engineering Works in August and September, 1909, on the “Hilonian”? A. I did.

Q. What was it that you had to do with them?

A. I had orders to point out all the work which was done on that occasion?

Q. Point it out to whom?

A. To Mr. Gardener and to Mr. Heynemann; first, to Mr. Gardener.

Q. Now, will you please take your Exhibit 2, and go over it item by item and indicate what work you

(Testimony of C. C. Kinsman.)

pointed out to Mr. Gardener and to Mr. Heynemann.

Can you do that? A. Yes, sir.

Q. All right, commence and do it and call out the numbers.

A. You mean where I showed them the whole of it?

Q. I want you to make your explanation of what you did show, covering each item as you go along ?

A. I showed them No. 1, with this exception, that the fore and aft and thwartship angle-irons could not be seen.

Q. Now, make any explanation which you have to make with reference to your work on this occasion, as you go along? A. No. 2—

Q. (Intg.) Well, if you are not going to make any explanation [1606—1517] of that I will have to ask you a question; why did you not show them the fore and aft and thwartship angle-irons?

A. Because we did not go into the tank.

Q. Could that be shown? Where are they?

A. They are in the tank.

Q. Can they be seen from the top?

A. No, but the extent of them could be shown by the riveting on the tank-top, which was done.

Q. Was that shown them? A. Yes, sir.

Q. Well, now, you see, that was a part of the explanation which you did not make. Now, as you go along, make a full and complete explanation of each item.

Mr. FRANK.—Q. The extent of that was shown by the riveting, was it? Is that it?

Mr. McCLANAHAN.—Q. Proceed, Mr. Kinsman,

(Testimony of C. C. Kinsman.)

we are wasting time.

A. No. 2 I could not show. No. 3 was shown to them, with the exception of the patches riveted over the holes. No. 4 was shown to them. And No. 5. And No. 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17. No. 18 was not shown to them; we could not get inside of the boilers; the extent of this work was described to them.

Q. That is the extent of the work done by the United Engineering Works, under item 18, was described to Heynemann and Gardener?

A. Yes, sir.

Q. Now, proceed.

A. No. 19 was shown to them; No. 20 was shown to them, but I could not give them the exact amount.

Q. What is No. 20?

A. Lagging on main boilers, repaired and renewed.

Q. Why could not that be accurately determined?

A. Because between the time of putting it on and the time of [1607—1518] the visit of Mr. Gardener and Mr. Heynemann that had all been painted.

Q. Did you know, at the time it was put on, how much was put on? A. Approximately.

Q. What was that amount?

A. As I remember it at that time, it was some 60 or 80 square feet.

Q. Did you make that explanation to Gardener and to Heynemann? A. Yes, sir.

Q. Now, proceed?

A. No. 21, this was shown to them, but they could not see the whole of the main stop-valve stem, but I

(Testimony of C. C. Kinsman.)

gave them a description of what they could not see at the time. No. 22, they did not see the actual discs and seats but I showed them similar ones or squares that were on the ship.

Q. What you did show them were the counterpart of the subject of the repair work?

A. The exact counterpart. No. 23, I showed them everything except the valve discs and the seat and a portion of the valve stem.

Q. With reference to No. 23, did you have any conversation with them about the valve and the disc?

A. I described the design of them.

Q. Did you describe the work that was done on them? A. The size of them.

Q. Please make that explanation as you go along.

A. No. 24, they were shown the strap-hangers on the feed-lines but there were no hangers on the bottom blow-line.

Q. Are there strap-hangers on the bottom blow-line now? A. No, sir.

Q. Were there any before the ship went over to the yards of the United Engineering Works?

A. No, sir.

Q. Then you did not show them the strap-hangers on the bottom blow-lines because there are no strap-hangers on the bottom [1608—1519] blow-lines?

A. That is it.

Q. And there were none at any time? A. No.

Q. Now proceed.

A. No. 25, I showed them where the low water-cocks were placed; naturally they could not see the

(Testimony of C. C. Kinsman.)

holes; they naturally assumed there was a hole there.

Q. Did they see the low water-cocks?

Q. Yes, and the size of them. No. 26, they could not see the damper, but the handle was shown to them and the damper described. No. 27 was shown to them; No. 28 was shown to them; and No. 29; No. 30a, 30b, and 31. No. 32 I could not locate.

Q. Have you been able to locate No. 32?

A. No, sir, I have never located it. No. 33 was shown to them, and 34, 35 and 36 were all shown to them. No. 37 we could not see. 38, they were shown the rudder-head block. No. 39, they could not see but it was described to them; the same comment as to No. 40. No. 41, the rollers for the chain-leads were shown to them, and I believe I explained about them at the time, that I doubted if they had been raised. No. 42 could not be seen at that time. 43, 44 and 45 the same comment.

Q. That is, they were not shown to them?

A. No. No. 46 they have seen; No. 47—

Q. When you say “they have seen” you mean you showed it to them?

A. Yes, that I pointed it out to them. 46, 47 and 48 were all shown to them. 49 and 50 could not be seen at that time. 51 and 52 they have seen. No. 53 could not be seen at that time. 54, 55, 56, 57 and 58 were all shown to them. 59—these fittings could not be shown to the experts as they had been removed before their examination.

Q. Did you make any explanation to them about what No. 59 was? A. Yes, sir.

(Testimony of C. C. Kinsman.)

Q. Well, why did you not state it, Mr. Kinsman? Did you [1609—1520] describe those fittings?

A. Yes, sir.

Q. Now, proceed.

A. No. 60 and 61 were shown to the experts. No. 62 was shown to them but I explained to them that it was not necessary for the purpose which is stated here. No. 63 and No. 64 were shown to them. No. 65 they could not see, but the nature of this work was explained to them. No. 66 they could not see but the nature of the work was described. No. 67, 68 and 69 were all shown to them. No. 70, they could not see the actual faces of the couplings but they could see the couplings and determine the size. No. 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82 and 83, were all pointed out to them. No. 84, they could not see the valves but they were described to them and the sizes given to them. Numbers 85, 86 and 87 were all shown to them. No. 88, the L. P. piston they could not see, but the follower they did see. No. 89, the spare L. P. valve-stem, they saw, that was shown to them. No. 90, they did not see the nut but they saw the spare one or the similar one to it. No. 91, these bolts were shown to them but there was a doubt in my mind whether they were renewed, or not. No. 92, the head was pointed out to them, or the cover was pointed out to them, but they could not see the ribs.

Q. Did you make any explanation of what they were?

A. At that time I described the number of ribs and the size of the holes. Nos. 93, 94 and 95 were all seen

(Testimony of C. C. Kinsman.)

by the experts. No. 96, the neck-bushing could not be seen, but was described at that time. No. 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, and 116 were all shown to the experts. No. 117, they did not see the valve-seats or discs but the same were described to them. Nos. 118, 119, 120, 121, 122, 123a, 123b and 124, were all pointed out to them. No. 125, they did not see the tape but [1610—1521] the amount was easily determined.

Q. Was it determined?

A. They measured it, yes. No. 126 was pointed out to them. No. 127 I never could find and never knew of anything of that nature on the ship. No. 128, they could not see the corrugated gaskets, but the sizes of them were easily determined. No. 129, the cylinder was pointed out to them, but the bullring, rings and so forth on the inside they did not see but they were described to them, No. 130, the chipping and facing that was done on the top of the valve could not be seen, but the extent of the work was described to them. Nos. 131, 132 and 133 were all pointed out to them. No. 134, they did not see the interior of the cylinder or the bullring; they were given the size of the cylinder and a description of the bullring. Nos. 135, 136, 137 and 138 were all shown to them. No. 139 was pointed out to them, with the exception of the strainers. No. 140, only a portion of the valve-stem was shown to them, but the rest of it was described.

Q. Did you describe the strainers to them under item 139?

(Testimony of C. C. Kinsman.)

A. I believe they have seen them since.

Q. That is not what I am asking you. Did you describe the strainers to them, yes or no?

A. I gave them the size of the valve.

Q. Mr. Kinsman, are we to understand that you showed this work to these men once?

A. Many times.

Q. Many times? A. Yes.

Q. When was the first time the work was shown to both or to either of these men?

A. Can I refer to notes as to the arrival and the departure of the ship?

Q. Anything that will assist your memory.

A. The first time Mr. Gardener visited the ship was upon the [1611—1522] arrival of the ship. On the date of the arrival of the ship the first trip after Putzar had left the ship. That was March 13th.

Q. That is, the ship arrived March 13th?

A. Yes, and that was the date of his first visit.

Q. What year was that? A. 1910.

Q. That was the date of his first visit?

A. Yes, sir.

Q. And the date of his first being shown this work?

A. Yes, sir.

Q. Now, proceed.

A. Between March 13th and March 19th Mr. Gardener made, I think three visits; either two or three, I am not certain.

Q. Who accompanied him on his visits?

A. He was alone at that time.

Q. Who went over the ship with him? A. I did.

(Testimony of C. C. Kinsman.)

Q. Anyone else?

A. I think the captain and the mate and Captain Saunders did, but not on the first day.

Q. Have you now any recollection of the extent of those visits of Mr. Gardener?

A. Well, they were very thorough. He spent considerable time there. I remember the first day he came in the morning and afterwards in the afternoon. He made two visits on that day.

Q. Now, proceed.

A. Then on the date of arrival on the next trip Mr. Gardener and Mr. Heynemann came down. That was on the 22d of April.

Q. What year?

A. The same year, 1910. And between April 22 and May 4, the sailing date of that ship on that trip, to my knowledge they both made at least four visits.

Q. Of what extent?

A. Well, on one occasion they kept me there until very late at night. [1612—1523]

Q. When did they come on that occasion?

A. I think they spent about 30 hours during the time we were in port.

Q. That is, during the "Hilonian's" stay on that occasion at this port, they spent 30 hours?

A. Yes.

Q. Why do you remember it was 30 hours?

A. Well, I remember keeping track of it there at one time because I was getting kind of tired of it.

Q. That was in April, was it?

A. Yes, April 22 to May 4. April 22 was the first

(Testimony of C. C. Kinsman.)

visit of Mr. Heynemann.

Q. And on each occasion was Mr. Gardener with him after that? A. Yes, sir.

Q. They were together?

A. Mr. Heynemann made arrangements with me to visit that ship on a Sunday. I gave him the key to my room. I know that on the following morning his clothes were in my room, though I could not say that he was there on that Sunday. The following trip, between June 5 and 15, I remember one visit by Mr. Heynemann and Mr. Gardener, accompanied by Mr. Diericx and yourself. I remember that visit clearly. Whether or not they visited the ship again during that time I cannot remember. And since that time, in the month of September of this year, I visited the ship with Mr. Gardener and Mr. Heynemann and spent two or three hours there.

Q. On these several occasions when you were present and Gardener and Heynemann were on the ship, what was done? Give it to us not in detail but give a general statement of what was done.

A. A general survey of the work that was done at the United Engineering Works in September, 1909.

Q. What do you mean by a general survey?

A. Well, we went over the whole work which was performed at that time. [1613—1524]

Q. What do you mean by "going over"?

A. They occupied their time in making measurements and sketches and I presume estimates.

Q. Was the work discussed with you?

A. It was.

(Testimony of C. C. Kinsman.)

Q. Do you know of your own knowledge whether Messrs. Gardener and Heynemann, or either of them, have seen any of the work which you have stated you were unable to show them?

A. Only from hearsay.

Q. Were they on the ship at the time she was in the dock recently? A. They told me they were.

Q. Then you don't know? A. No.

Q. Now, Mr. Kinsman, I hand you "Curtis Exhibit No. 4" and ask you if you have ever seen that book before? A. Yes, sir.

Q. I hand you another paper and ask you what that is.

A. That is a copy with corrections made in ink, on the time-book.

Q. An exact copy?

A. Yes. There may be a few pencil marks on here that do not belong here.

Q. How do you know it is a copy?

A. Well, I checked one into the other.

Mr. McCLANAHAN.—I offer that in evidence, Mr. Frank, simply as a means of convenience for us both. The time-book itself is in bad shape. I ask that it be marked "Respondent Kinsman Exhibit No. 3."

Mr. FRANK.—I think I will have to object to that being put in evidence. It is utterly immaterial. I do not want to get this record built up, so that when Mr. McClanahan comes to appeal the case there will be so very much printing and costs. The original is in evidence and that is sufficient.

(Testimony of C. C. Kinsman.)

Mr. McCLANAHAN.—I think, Mr. Frank, when it comes to the question of appealing, I can stipulate with you about this [1614—1525] document which I have offered.

(The document was here marked “Respondent Kinsman Exhibit No. 3.”)

Q. Mr. Kinsman, have you at any time made a classification of the time of labor and the kind performed as shown by “Curtis Exhibit No. 4”?

A. Yes, sir.

Q. I hand you a document and ask you what that is.

A. That is a classification of the kind of labor and the number of hours of labor as it appears from that exhibit, with the exception of the lead pencil notes.

Q. What lead pencil notes do you refer to?

A. What I considered a duplication in that book.

Q. What lead pencil notes are you referring to—on the sheet itself? A. Yes.

Q. The only lead pencil notes on the sheet?

A. The notes under the heading of “Machinists, machinists’ helpers, riggers and foremen.”

Q. What is this note up at the top, in pencil, “September 4, 100 added”?

A. That should not be there.

Q. You don’t know anything about that?

A. Yes, I put it there; that was a correction I made.

Mr. McCLANAHAN.—We offer this sheet in evidence and ask that it be marked “Respondent Kinsman Exhibit No. 4.”

(Testimony of C. C. Kinsman.)

Mr. FRANK.—I object to that upon the ground that it is immaterial and upon the further ground that it does not appear that this witness is in any position to make a classification.

(The document is here marked “Respondent Kinsman Exhibit No. 4.”)

Mr. McCLANAHAN.—Q. Mr. Kinsman, I understand that this [1615—1526] document, Exhibit No. 4, with the exception of the pencil memorandum which you have referred to, is an exact transcript of the time-book, “Curtis Exhibit No. 4”; is that correct?

Mr. FRANK.—That is utterly improper, Mr. McClanahan. It is an attempt to justify yourself. The witness can tell what it is; it is immaterial what you understand it to be.

Mr. McCLANAHAN.—Now, Mr. Frank, you are wasting a lot of time by that, and unnecessarily so.

A. Yes, sir.

Mr. McCLANAHAN.—You ought to join with me, Mr. Frank, in clearing this matter up as briefly as possible.

Mr. FRANK.—Yes, I ought to, but not in that way.

Mr. McCLANAHAN.—Q. Explain, Mr. Kinsman—Mr. Frank seems to insist upon it—what you have done in the labor which is shown on Exhibit 4, with reference to the time-book.

A. This sheet is a copy of that book, under the classifications called for in that book, of the number of hours on each day of that time-book, with the one

(Testimony of C. C. Kinsman.)

addition that I have placed here in red ink, the number of names that appear on each day under each classification.

Q. And where did you get the number of names appearing on each day in each classification?

A. By counting them.

Q. By counting them on the back of what sheets in the time-book?

A. By counting the names as they appeared.

Q. The names as they appeared on the sheets?

A. Yes, sir.

Q. Now, will you make your explanation of the pencil markings at the bottom of the exhibit, beginning first with the machinists?

A. I have here, "Minus 130 hours"; in other words, 130 hours, in my estimation, should be subtracted on September 17th, because I consider the fourth sheet of September 17th a duplicate, or a duplication of the first sheet of September [1616—1527] 17th; that is to say, sheet 4 is a duplication of part of sheet 1 of September 17th.

Q. But the whole of sheet 1 of September 17th appears on your Exhibit 4; in other words, the duplication appears there?

A. Yes, everything appears here, and in fact 14 hours—

Q. (Intg.) Just wait a minute; we will get to the 14 hours in a moment. Your memorandum in pencil, under the heading of "Machinists," "130 hours, September 17th," means there should be taken

(Testimony of C. C. Kinsman.)

off 130 hours on that day because of that duplication?

A. That is what I think. Now, I have here "Plus 10."

Q. Under "Machinists"? A. Yes, sir.

Q. What is your explanation of that?

A. I forget the date, but there was one case there where a man worked 10 hours straight, 4 hours overtime, and he is only credited with 8 hours total time and I thought that should be 18, and I made this notation "Plus 10."

Q. That is, you think the book shows a clerical mistake? A. Yes, sir.

Q. And you show 10 hours more than it does?

A. Yes, sir.

Q. Referring to your pencil notation under "Machinists helpers" what is your explanation?

A. On the 17th of September I have "Minus 100," due to the same duplication of sheet 4 on the 17th of September. I also have here "Minus 14 on August 26th, night."

Q. What does that mean?

A. In "Curtis Exhibit 4" there appears on that night 13 names but only 12 numbers in the hour column. In my copy there appears 14 numbers—

Q. You mean your copy of the time-book?

A. Yes. [1617—1528]

Q. Meaning your "Exhibit 3"?

A. Yes. As all the men worked the same number of hours I could not determine which one was left out and I allowed the 14 hours in here.

(Testimony of C. C. Kinsman.)

Q. What is the explanation of the pencil markings under the title "Riggers"?

A. "Minus 86 hours on September 17th," the same duplication of part of sheet 1.

Q. What date? A. September 17th.

Q. What is your explanation of the pencil markings under "Foreman"?

A. The same duplication on September 17th, "Minus 12."

(A recess was here taken until 2 P. M.) [1618—1529]

AFTERNOON SESSION.

C. C. KINSMAN, direct examination resumed.

Mr. McCLANAHAN.—Q. Mr. Kinsman, was there any change in the work that would affect knowledge of its character between the completion of the work by the United Engineering Works and its inspection by Messrs. Gardener and Heynemann?

A. No, sir, with one exception. I might explain that.

Q. What is the exception?

A. That was on the whistle-pipe. They placed a union—

Q. Who did?

A. The United Engineering Works, and a nipple on that line which the crew of the ship removed and replaced by a pair of flanges previous to their inspection.

Q. Did Gardener and Heynemann have knowledge of the nipple and what else was it?

(Testimony of C. C. Kinsman.)

A. And the union.

Q. And the union? A. They did.

Q. How did they have it?

A. I explained that to them.

Q. Mr. Kinsman, how much of your time during the repair on the "Hilonian" was spent by you in watching the work?

A. Practically all of my time with the exception of nights, Sunday and Admission Day, the 9th of September.

Q. Was that the work that you showed Messrs. Gardener and Heynemann, the work that you saw progressing? A. Yes, sir.

Q. Mr. Kinsman, in the performance of work under the specifications which you examined this morning, was anything uncovered upon which it was found necessary to do work?

Mr. FRANK.—I do not understand that.

Mr. McCLANAHAN.—Q. Do you understand the question, Mr. Kinsman? [1619—1530]

Mr. FRANK.—I suppose that is all that is necessary. If Mr. Kinsman understands it none of us need understand it.

Mr. McCLANAHAN.—I am very much surprised that you do not understand it. Your case abounds with evidence of work that was uncovered in the performance of the specification work which was not known of before and which work had to be done. That question is directed to that matter entirely.

Q. Do you understand the question, Mr. Kinsman?

A. I think I do.

(Testimony of C. C. Kinsman.)

Q. Then answer it.

A. The work called for in the specifications or part of it was uncovered.

Q. You evidently do not understand my question. In the performance of the work and all of it called for by the specifications, or which was done under the specifications, was anything uncovered upon which it was found necessary to do work?

A. No, sir.

Q. Did you know Mr. Putzar before the repair work was commenced on the "Hilonian"?

A. I had met him.

Q. When did Mr. Putzar report for work as a timekeeper on the "Hilonian"?

A. Sometime on the second day after arriving at the United yards.

Q. What day would that be? A. The 24th.

Q. Of what month? A. August, 1909.

Q. Did Mr. Putzar occupy a room on the "Hilonian" during the repair work? A. He did not.

Q. Did you ever see Mr. Putzar using the time-book which is marked "Curtis' Exhibit 4" during the progress of the work?

A. I never saw the time-book before I saw it here.

Q. How often did you see Mr. Putzar during the progress of the work?

A. I saw him every day except Sundays—that is, every day I was on the job. [1620—1531]

Q. Did you see him with any kind of a book?

A. He had a hand-book.

Q. What kind of a book was that?

(Testimony of C. C. Kinsman.)

A. Such as we all carry, a pocket-book.

Q. A book that you carry in your pocket?

A. Yes, sir.

Q. When you say "we all carry" what do you mean?

A. Everybody connected with a job of that description.

Q. Did you carry one? A. Yes, sir.

Q. Did Mr. Klitgaard carry one? A. Yes, sir.

Q. Did Mr. Williamson carry one?

A. I could not say that he did, but I presume that he did.

Q. Did Mr. Gray carry one?

A. Well, if I was in his position I would. I could not say that he did.

Q. Mr. Kinsman, did you ever see Mr. Putzar checking off the men, employees of the United Engineering Works as they went on or from the ship?

A. No, sir.

Q. Do you know of any occasion where it would have been impossible for him to have done so?

A. Yes, sir.

Q. When was that?

A. Well, I recollect two occasions on leaving the ship carrying on a conversation with Mr. Putzar well up in the yard, where it would be absolutely impossible for him to check the men coming off the ship, and at the time they were coming off the ship.

Q. Have you ever had any experience in repair work on ships in the way of superintending it or otherwise? A. I have.

(Testimony of C. C. Kinsman.)

Q. State your experience.

A. Starting at the last, the tug "Intrepid" of Honolulu, a year ago last September, I think. I not only wrote the specifications for that job but carried them out in full.

Q. Who was the job performed by?

A. The Honolulu Iron Works? [1621—1532]

Q. Did you on that job keep time yourself?

A. I did.

Q. How did you do it?

Mr. FRANK.—It is immaterial how he kept time.

Mr. McCLANAHAN.—I withdraw that question if it seems to displease you, Mr. Frank, for the present only.

Mr. FRANK.—I do not want you to please me—displease me.

Mr. McCLANAHAN.—Then I won't withdraw it.

Q. Answer the question, Mr. Kinsman.

Mr. FRANK.—Subject to objection.

A. I kept time on that job by getting the names of the men, checking them in the morning, also seeing that they were on the job during between morning and noon, checked them in the afternoon and also seeing them on the job in the afternoon.

Mr. McCLANAHAN.—Q. Did you keep time of the hours worked?

Mr. FRANK.—The same objection to this whole line of examination. It is immaterial what he did on the "Intrepid."

A. I kept the actual hours worked.

(Testimony of C. C. Kinsman.)

Mr. McCLANAHAN.—Q. Give your next experience.

Mr. FRANK.—The same objection.

A. I am taking the last first. The previous one was in Aberdeen, Washington, which I also made the specification of and overhauled the steamer “Fair Oak.”

Mr. McCLANAHAN.—Q. Did you keep time at that time? A. Yes, sir.

Q. In the manner you have indicated on the “Intrepid”? A. The same way.

Q. State your further experience.

A. Between those two jobs I supervised the installation of the propelling machinery on the steamer “Raymond” in San Francisco, the steamer “Gray’s Harbor” in Portland, and on [1622—1533] both of these jobs I kept time not for the job, but for my own personal satisfaction.

Q. In the same manner as you have indicated?

A. Yes, sir.

Q. Proceed. Did you have anything to do with repair work on a ship?

A. Well, I have been on numerous ships where there were repair jobs going on.

Q. How many ships have you been connected with in the engine-room during your experience?

A. Offhand, I should say 26.

Q. How long have you held a chief engineer’s license? A. About five years.

Q. Mr. Kinsman, you are familiar, are you not, with the work done on the “Hilonian” other than

(Testimony of C. C. Kinsman.)

which was covered by the specifications, and the specifications as modified? A. Yes, sir.

Q. What we may call extra work? A. Yes, sir.

Q. Would there have been any difficulty in keeping track of this extra work performed on this job in the way of time and material?

A. I don't think so.

Q. Do you remember when the "Hilonian" was docked at the works of the United Engineering Works? A. The date do you mean?

Q. Yes. A. On August 23d.

Q. I mean the day she was put on the marine railway? A. I think I do.

Q. What was it?

A. September 10th. I should like to explain that answer.

Q. All right.

A. On September 9th I was not on board of the ship, but the next day I was told that Captain Matson had been over there and made the remark he would like to see the ship on the dock, and I know I was on the ship when she went on the dock.
[1623—1534]

Q. Do you remember the gudgeon rudder work that was done on the "Hilonian" at this time?

A. I saw the work going on; yes.

Q. Were you on the ship when that work was found to be necessary? A. I must have been.

Q. Do you remember the uncovering of that work?

A. I think that work was uncovered when we went on the dock.

(Testimony of C. C. Kinsman.)

Q. When you first went on the dock?

A. Yes, sir.

Q. Do you know when work was actually commenced on the gudgeons?

A. That work was commenced on the day after we got in the dock.

Q. Do you know what time of the day?

A. I don't remember whether they started to unship the rudder the night we got on the dock or the day following; that is, the first thing in the morning on the day following.

Q. Do you know whether after work was commenced on the gudgeons it was continuously performed?

A. I cannot think of any reason to think otherwise.

Q. Who had charge of the crew of the "Hilonian" as she was undergoing repairs?

A. Mr. Petersen had charge of the deck department and I had charge of the engineer's department.

Q. Were any of the crew on the ship at night while she was undergoing repairs?

A. In the engineer's department there was only one; that is all I can answer.

Q. Who was that? A. Mr. Klitgaard.

Q. The chief engineer? A. Yes, sir.

Q. You were not on the ship at night?

A. No, sir; nor none of the crew with the exception of one night.

Q. What night was that?

A. I think that was the night before we left the

(Testimony of C. C. Kinsman.)

yard, on the 21st of September.

Q. That was on the night of the 21st of September? [1624—1535] A. Yes, sir.

Q. Aside from that none of the crew were on the ship at night?

A. That is, you are talking of the engineer's department?

Q. If that is what you are talking of?

A. Yes, sir.

Q. Do you know whether the United Engineering Works could connect up their current with the local county current, or not? A. I think they could.

Q. You don't know, or what is the distinction between your thinking so and knowing so?

A. I remember on one occasion when they burned out all the lamps in the ship by hooking on a heavier current than the lamps would stand.

Q. Was that in the daytime? A. Yes, sir.

Q. How does that assist you in making the statement that you think they could connect up with the city current?

A. Well, we never had that trouble at any other time. I assume that the city current was different from their current.

Mr. FRANK.—I move to strike out all the testimony on that subject. His assumptions are not evidence.

Mr. McCLANAHAN.—Q. That is your only knowledge on the subject? A. Yes, sir.

Q. I show you "Exhibit No. 2," Mr. Kinsman, which is the 140-item compilation of Schedule 1, at-

(Testimony of C. C. Kinsman.)

tached to the libel. Calling your attention to the 9th item of that exhibit, have you any comment to make on that item? A. No. 9?

Q. Yes.

A. "Made and fitted two sets of iron guards for H. P. and L. P. crank-pits"?

Q. Yes.

A. To the best of my recollection these were simply repaired.

Q. You make a distinction between being repaired and made as stated in the specifications?

A. Yes, sir. [1625—1536]

Q. Calling your attention to item No. 24, I will ask you if you have any comment to make on that item?

A. You mean "Supplied and fitted strap-hangers on feed and bottom blow-lines"?

Q. Yes.

A. There are no hangers on the bottom blow-lines nor has there ever been any while I was in the ship.

Q. I call your attention to No. 23 of the specifications, and ask you if you have any comment to make on that item?

A. No. 23? "Made and fitted two valve-discs, seat, yoke, stem and nut for auxiliary steamline over boilers." The fitting was all done by the crew.

Q. What crew? A. The engine-room crew.

Q. Of the "Hilonian"?

A. Yes, sir, of the "Hilonian."

Q. Was the crew of the "Hilonian" under the pay of the United Engineering Works?

A. No, sir.

(Testimony of C. C. Kinsman.)

Q. I call your attention to item No. 54 in the specifications, and ask you if you have any comment to make on that?

A. There are four pipes leading to the engine-room tank manifold, three of which are of lead, and they were altered by the Smith Copper Works.

Q. The lead pipes were?

A. Yes, sir; there was one iron pipe which was altered by the United Engineering Works.

Q. I call your attention to item No. 58 of the specifications, and ask you if you have any comment to make on that item.

A. No, sir, I cannot recall anything now.

Q. What is that?

A. I cannot recall any comment on that now.

Q. Do you know whether the United Engineering Works furnished all of the copper pipes specified by that item?

A. My copy reads "All copper pipe connected."

Q. Who was that copper pipe furnished by?
[1626—1537]

A. The Smith Copper Works, and a portion of the copper pipe was put up by Dalano Brothers.

Q. You mean by "put up" connected?

A. Yes, sir, that is the small copper pipe leading to the gauges.

Q. I call your attention to Schedule 9 of the libel, where we find that there is a bill for the construction of a new smokestack, "Removing old and installing new for \$900"; and it is in evidence that that was a contract. Bearing that in mind, I call your atten-

(Testimony of C. C. Kinsman.)

tion to No. 59 of the list of 140 items, and ask you if that is a proper charge as an extra, outside of the contract, assuming that it pertains to the smokestack on which there was a contract, as I have suggested?

Mr. FRANK.—I object to that. This man has been held up here as the judge of this case, and the judge of every item in it, and the expert, the engineer, the cook and bottlewasher and boatswain, and I think it is about time to quit. I object to that as immaterial. This man is not the judge of what is proper or what is improper.

Mr. McCLANAHAN.—Q. Answer the question.

A. I don't think it is.

Q. Do you know whether anything was furnished in connection with that item 59, which would be in your opinion outside of the contract for the smokestack? A. No, sir.

Q. I call your attention to item No. 62, and ask you if you have any comment to make on that item.

A. It was not necessary to remove the forward bilge-pump to braze any copper pipe.

Q. Was that work done however?

A. The forward bilge-pump was removed for the purpose of making a joint between the air-pump body and the condenser. [1627—1538]

Q. Was it necessary to remove it for that purpose?

A. Yes, sir.

Q. Was the copper pipe referred to in this item 62, brazed?

A. I do not know what copper pipe they referred to.

(Testimony of C. C. Kinsman.)

Q. You do not? A. No, sir.

Q. Is there a copper pipe there?

A. There are several in that locality.

Q. Were any of them brazed by the United Engineering Works?

A. I think the Smith Copper Works brazed all the pipes.

Q. Do you know whether the United Engineering Works brazed any? A. No, sir.

Q. You do not know? A. No, sir.

Q. In connection with what work was this forward bilge-pump body removed? Work performed on what part of the ship?

A. That part of the specifications calling for the removal or the making up of the joints between the air-pump body and the condenser.

Q. I call your attention to items 70 and 71 of the 140-item list, and ask you if you have any comments to make on those two items?

A. Well, it says, "Turned down thrust-shaft couplings and faced off." The couplings were not turned down.

Q. You are speaking now of item 70?

A. Yes, sir.

Q. Were they faced off? A. Yes, sir.

Q. Do they have to be faced off under the specifications?

A. To put the shaft in proper alignment, they would have to be faced.

Q. And under what specification would that work come? A. No 9, I think.

(Testimony of C. C. Kinsman.)

Q. Is that all you have to say about No. 70?

A. Yes, sir.

Q. You mean No. 9 of the main specifications?

[1628—1539]

A. You asked me what portion of the specifications and I said No. 9. I don't know of any comment on No. 71.

Q. You have nothing to say about No. 71?

A. No, sir.

Q. I call your attention to No. 74 of the 140-item list, and ask you if you have any comment to make on that item?

A. The forward coupling was not turned down as is stated there.

Q. Can you state what item of the original specifications that work would come under—the work covered by item No. 74?

A. It would come under No. 9, if any.

Q. Will you please examine item No. 75 of the list, and state what item of the specifications that work would come under?

A. It would come under No. 9.

Q. Examine No. 76 and state what item of the specifications that work would come under.

A. That would come under No. 9.

Q. Examine No. 77, with the same question.

A. The same answer.

Q. Examine No. 78 with the same question.

A. I don't know as the water-thrust was reconstructed. The replacing of the water service would come under No. 9.

(Testimony of C. C. Kinsman.)

Q. If the water service had been reconstructed would you have known of it?

A. I think I would, yes.

Q. Can you state whether it was reconstructed or not, as distinguished from being replaced?

A. To the best of my recollection it was not reconstructed.

Q. I call your attention now, Mr. Kinsman, to Schedule No. 4 attached to the original libel. With that Schedule before you, I will ask you to examine No. 81 of the 140-item list and state under what item of the specification No. 81 comes. Or, if in your opinion it does not come under any items, state if in your opinion it comes under Schedule No. 4. [1629—1540]

A. It is clearly under No. 4.

Q. It is clearly under Schedule 4 of the libel?

A. Yes, sir.

Q. I call your attention to item 82 of the 140-item list, and ask you if that item comes under any of the items of the original specifications.

A. A portion of that No. 82 I would consider a part of No. 9 of the original specifications, and partially an extra.

Q. What is the extra of that item?

A. Enlarging the handholes.

Q. I call your attention to item 89 of the 140-item list and ask you if you can state what item of the specifications that charge comes under.

A. I don't know what a lug-thrust is. Assuming that that means "Lengthened spare L. P. Valve-

(Testimony of C. C. Kinsman.)

stem," I think that would be a portion of the recompense work in No. 2.

Q. A portion of the recompense work of No. 2?

A. Yes, sir.

Q. Mr. Kinsman, was the spare L. P. valve's stem lengthened? A. It was.

Q. For what purpose?

A. It would cease to be a spare if it was not lengthened.

Q. For what purpose was it lengthened?

A. To make it of any value to the ship.

Q. What was it used for? A. As a spare.

Q. After its being lengthened it was still used as a spare? A. Yes, sir.

Q. Or held as a spare on the ship?

A. Before it was lengthened it was not a spare.

Q. What was the duplicate of that lengthened for?

A. To receive the balance-piston.

Q. What balance-piston?

A. Which was installed on top of the low-pressure valve. [1630—1541]

Q. That is what you have termed recompense work? A. Yes, sir.

Q. Will you turn to item 90 of the 140-item list, and state what item of the original specifications that item belongs to? A. No. 2.

Q. What do you mean by No. 2?

A. That portion of the specification calling for the work on the low-pressure valve.

Q. I call your attention to No. 91 of the 140-item list and ask you what item of the original specifica-

(Testimony of C. C. Kinsman.)

tions that belongs to. A. That I don't know.

Q. I call your attention to item No. 94 and ask you the same question. A. No. 5.

Q. I call your attention to item No. 103 of the 140-item list and ask you what comment you have to make on that charge.

A. When the ship was placed at the United Engineer's dock, the turning engine was in good shape, and during the time that the employees of that company used it there were portions of it broken, and this is to replace those broken parts.

Q. I call your attention to item 104, and ask you what item of the original specifications that work belongs to.

A. I am in doubt on that.

Q. Is that your answer?

A. I know that all the set-screws were in place when the ship went over there. Now, if these set-screws were lost it should come under the original contract, but if these set-screws, the size of them were changed, I would consider that an extra.

Q. Was there any necessity for changing the sizes of the screws? A. Not that I know of.

Q. I call your attention to item No. 106, and ask you what [1631—1542] comment you have to make on that charge.

A. I don't know what a coffer-drain is.

Q. Well, assume that that means "copper." (Addressing counsel.) I suppose you will admit, Mr. Frank, that that is an error. It should mean "copper."

(Testimony of C. C. Kinsman.)

Mr. FRANK.—I do not know. You have gone through this thing and corrected it up, and this man has corrected it up to suit himself. I don't know what he means when he says he has corrected it up. It is no document of mine.

Mr. McCLANAHAN.—That is exactly what it is. Schedule 1 of your libel says, "Coffer drain." Will you admit it means copper?

Mr. FRANK.—I do not know anything about it.

Mr. McCLANAHAN.—You can ask Mr. Curtis, who is seated by your side, who made the bill.

Mr. FRANK.—This man knows all about it.

Mr. McCLANAHAN.—You decline to ask Mr. Curtis?

Mr. FRANK.—When the time comes I will explain everything that is necessary to be explained.

Mr. McCLANAHAN.—Q. Assuming that that is meant for copper what comment have you to make?

A. That should come under the original specifications in assembling.

Q. In assembling, you say? A. Yes, sir.

Q. What do you mean by that?

A. Assembling and placing in condition to turn that ship over to the owners; that is, putting her in shape to go to sea.

Q. Then I understand that would not be under any particular item in the specifications?

A. Well, it would come under the item for which they took them down. There is nothing called for in the specifications [1632—1543] to take those drains down.

(Testimony of C. C. Kinsman.)

Q. How did they happen to be taken down?

A. Probably to facilitate their work.

Q. I call your attention to item No. 108 of the 140-item list, and ask you under what item of the specifications that work comes?

A. The first part of 108 should be in 107.

Q. What part do you refer to?

A. Where it says "globe valve to drain the main steam line."

Q. But with that correction—

A. (Intg.) The latter part of 108, the replacing of the water service, should come under the original specifications in assembling. The fact that they were made of brass I would consider an extra. The removal of this water service was made necessary by No. 4 of the original specifications.

Q. Will you turn to item No. 125 of the 140-item list and tell me whether that charge comes under the original specifications or not?

A. It is part of the assembling.

Q. Then it does? A. Yes, sir.

Q. Turn to item 128 of that list, and I ask you the same question.

A. That is No. 1 of the original specifications.

Q. I call your attention to No. 130 and ask you the same question.

A. I consider that a part of the recompense work under No. 2.

Q. I call your attention to No. 134 and ask you the same question.

A. That is No. 6 of the original specifications.

(Testimony of C. C. Kinsman.)

Q. I call your attention to item No. 136 of the specifications, and ask you the same question.

A. That is No. 8 of the original specifications.

Q. I call your attention to item No. 137 and ask you the same question. [1633—1544]

A. No. 9 of the original specifications.

Q. I call your attention to the items 138 and 139 and ask you the same question.

A. No. 10 of the original specifications.

Q. Both those items? A. Yes, sir.

Q. I call your attention to item 140 and ask you the same question.

A. That I consider a part of the circulating-pump contract.

Q. I call your attention to item 127 of the 140-item list, and ask you if you have any comment to make on that charge.

A. There never was any drawings of any part of the propelling machinery of that ship on board the ship to my knowledge, and had there been I would have known it.

Q. Mr. Kinsman, these questions which I am going to ask you now, refer to the time when the "Hilonian" was undergoing repairs at the United Engineering Works. At that time was there ever done any work in the shop of the United Engineering Works to the piston-rods except that done under Schedule 4 of the libel? Please examine Schedule 4. A. No, sir.

Q. At the date of August 24, 1909, were any of the bearings of the "Hilonian" out of the ship?

(Testimony of C. C. Kinsman.)

A. No, sir.

Mr. FRANK.—I cannot repress my astonishment at the temerity and the boldness of this examination.

Mr. McCLANAHAN.—Q. Was there any work done on the tube-heads, other than that under Schedule 10 of the libel? Please examine Schedule 10.

Mr. FRANK.—And you are leading the witness from beginning to end. Why haven't you permitted the witness sometimes to testify in this case himself, Mr. McClanahan?

Mr. McCLANAHAN.—You have a right to object, Mr. Frank, but not to catechise me in the way you are doing. [1634—1545]

Mr. FRANK.—Well, the objection does not seem to do any good, and after it gets into the record it is too late to do anything with it, so I have to catechise you.

Mr. McCLANAHAN.—Please answer the question.

A. No, sir.

Q. Was any work done on the brake of the "Hilonian" except that performed under Schedule 7?

Mr. FRANK.—I will have to object and to insist that the matter of leading the witness be stopped. There is another way to examine the witness. You have been going all the way from A to Z testifying and leading the witness, and the witness simply saying yes or no, yes or no. Now, it is time that the witness testify to something himself.

Mr. McCLANAHAN.—What do you mean, Mr. Frank? Don't you know you have introduced a

(Testimony of C. C. Kinsman.)

charge against us for working on a brake?

Mr. FRANK.—I don't care—

Mr. McCLANAHAN.—You do not know that?
Well, I do.

Mr. FRANK.—I say I don't care. That does not give you any right to testify in this case.

Mr. McCLANAHAN.—I am not testifying.

Mr. FRANK.—Nobody else is.

Mr. McCLANAHAN.—I dispute that statement.

Mr. FRANK.—Well, I object to any further leading of the witness.

Mr. McCLANAHAN.—Answer the question, Mr. Kinsman.

A. No, sir.

Q. Was there any lagging work done on any cylinder in the shop, except the small balance-cylinder?

A. No, sir.

Q. Was the "Hilonian's" reverse shaft ever in the shop of the United Engineering Works?

A. No, sir. [1635—1546]

Q. Were any valves for feed-pumps ever furnished to the "Hilonian"? A. No, sir.

Q. Was any work ever done—

Mr. FRANK.—One moment; go a little slower. He need not answer you. You just put the question and that is as good as testimony. That is the way the game has been put up and we might as well have it. I want the Reporter to read the last few questions to me.

(Record read by the Reporter.)

Mr. McCLANAHAN.—Q. Was any work ever

(Testimony of C. C. Kinsman.)

done on a cylinder-head except that done to the small balance-cylinder in the shop of the United Engineering Works? A. No, sir.

Q. Were any of the "Hilonian" bed-plates, or were the bed-plates for the "Hilonian's" engine ever in the shop of the United Engineering Works?

A. No, sir.

Q. Was any work ever done on the air-chambers in the shop?

A. Do you mean in connection with the "Hilonian" job, or otherwise?

A. I prefaced this set of questions, Mr. Kinsman, with the statement that they referred to work done on the "Hilonian" during the time in dispute. Don't you remember that?

A. Well, there may have been work done on these air-chambers but they never were returned to the ship. They were discarded from the ship.

Q. Never any work done for the Matson Navigation Company? A. No, sir.

Q. Mr. Kinsman, "Adamson Exhibit No. 7" in this case, dated September 21, covering job number 5398, contains a charge for extension and brass tags for main and bilge injection; can you state under what item of work that charge comes? [1636—1547]

A. Under the installation of the circulator.

Q. You have referred to that before, have you, in your examination, to that circulator? A. Yes.

Q. And you called it the circulator-pump before?

A. The circulator-contract—the circulator-pump.

Q. It is the same thing?

(Testimony of C. C. Kinsman.)

A. Yes. I might explain there that those tags are required by law.

Mr. FRANK.—Q. Are you an authority on law, too, Mr. Kinsman?

Mr. McCLANAHAN.—Q. Will you please examine Schedule 4 of the libel, Mr. Kinsman, and state whether any work of babbitting thrust-collars, or any thrust-collar work was done on the “Hilonian” except under that schedule?

A. This called for all work that is necessary on the thrust-collars. Everything that was done on them was under this.

Q. And by “this” you refer to Schedule 4?

A. Yes, sir.

Q. Was any work ever done by the United Engineering Works on any oil-pump of the “Hilonian”?

A. No, sir.

Q. Was any work ever done by the United on a fly-wheel in the ship, except under the circulating-pump contract? A. No, sir.

Q. Was any cylinder-liner work ever done in the shop of the United Engineering Works?

A. No, sir.

Q. Is there any such thing as an air-cylinder on the ship, or was there? A. No, sir.

Q. Was anything ever done to the cover for slide-valve in the shop? A. No, sir.

Q. We are charged in this case for polishing a fly-wheel for circulating-engine. Can you state under what work that comes?

A. Under the circulating contract. [1637—1548]

(Testimony of C. C. Kinsman.)

Q. Was any shop work on the main bearings required to be done under the original specifications, or at all, except under Schedule 8 of the libel?

A. No, sir.

Q. Were any columns from the "Hilonian" ever in the shop of the United? A. No, sir.

Q. Mr. Kinsman, does the expression "main brasses" mean the same, or does it differ from main journals? Do those two expressions mean the same thing?

A. Different men have different ways of stating them; they mean the same thing.

Q. They mean the same thing? A. Yes, sir.

Q. Was any condenser from the "Hilonian" taken to the shop of the United? A. No, sir.

Q. Were any of the "Hilonian's" taps ever tempered in the shop of the United? A. No, sir.

Q. Was any swivel work called for under the original specifications? A. No, sir.

Q. If we have been charged for work under the heading "Detail for brake," under what schedule of the libel does that come? A. No. 7.

Q. If we have been charged for "alteration on bearing for main-bearing," under what schedule of the libel does that come? A. No. 8.

Q. Was anything that could be called "trolley rails" ever taken from the "Hilonian" to the shop of the United? A. No, sir.

Q. Under what item of work would a charge for "Nozzle for C. I. R. Pump" come?

A. Circulating-pump contract.

(Testimony of C. C. Kinsman.)

Q. Could any work have been performed on the wheel of the "Hilonian" prior to the ship going on the dock of the Marine railway? A. No, sir.
[1638—1549]

Q. And you have stated she went in there when—on the Marine railway?

A. On the 10th of September.

Q. Could any work have been performed on the sea-valves before the 10th of September or before she had been placed on the Marine railway?

A. It could have been, but it was not.

Q. Would it have been possible to have worked on the sea-valves, or the wheel of the "Hilonian," for 10 hours straight time on September 10th?

A. It would be possible on the sea-valves provided they took the right course.

Q. Was any work for 10 hours straight time performed on the sea-valves on that day? A. No, sir.

Q. What have you got to say about the wheel?

A. That is an impossibility unless there was a diver working on it.

Q. And there was no diver working on it?

A. No.

Mr. FRANK.—There is no use talking about you, Mr. McClanahan. Why don't you let the witness ask you the questions?

Mr. McCLANAHAN.—Keep your clothes on, Mr. Frank. I am almost through.

Mr. FRANK.—The devil of a lot of good it will do you!

Mr. McCLANAHAN.—What? To get through?

(Testimony of C. C. Kinsman.)

Mr. FRANK.—No, that kind of an examination.

Mr. McCLANAHAN.—Take the witness.

Mr. FRANK.—Well, I am not expected to conclude the examination of the witness this afternoon after that kind of business.

Mr. McCLANAHAN.—I understood you were going to take two weeks cross-examining him.

Mr. FRANK.—Well, we will see. [1639—1550]

Cross-examination.

Mr. FRANK.—Q. Mr. Kinsman, do I understand that “Respondent Kinsman Exhibit No. 3” was made up by you from “Respondent Curtis’ Exhibit No. 4”? A. It was corrected by me.

Q. And you checked it up, did you, from this, referring to “Respondent Curtis’ Exhibit No. 4”?

A. Yes.

Q. I show you, at the beginning, on the first page, the figures “5297” in red ink; where did you get that?

A. I think from the reverse side of that page.

Q. Show it to me on the reverse side of that page.

A. I am trusting to memory now. I will look. Here it is (indicating).

Mr. McCLANAHAN.—The witness shows counsel the reverse side of that page.

Mr. FRANK.—Q. That number is altered, is it not, on the reverse side of that page?

A. I don’t know whether it was altered at the time I examined it, or not. I am talking of when I made that comparison, not at the present time.

(Testimony of C. C. Kinsman.)

Q. I call your attention now to this: the original number was in carbon, was it not? A. Yes.

Q. And it is altered with a lead-pencil mark over it? A. Yes.

Q. Do you know when that was done?

A. I do not.

Q. Did you compare that with the other sheets that were delivered by Mr. Putzar to the United Engineering Works?

A. I don't know what was delivered by Mr. Putzar.

Q. You have seen "Curtis Exhibit No. 3," have you not, that is in evidence here? A. Yes.

Q. That is what I refer to. Did you compare that with those? A. I did. [1640—1551]

Q. If you did, why, then, did you not take the number that is on there, on "Curtis Exhibit No. 3"?

A. I don't know whether it was there or not.

Q. You don't know whether it was there or not?

A. No.

Q. Is that your answer now?

A. Yes, at this time.

Q. At what time? A. Now.

Q. Look at it then and see.

A. I see it now; yes.

Q. Do you mean by that answer, do you mean to suggest that it was not there when you checked those up? A. I don't know whether it was or not.

Q. Oh, you don't know whether it was or not?

A. No, sir.

Q. Did you not check them?

A. I did—now, hold on a minute; what do you

(Testimony of C. C. Kinsman.)

mean by checking them?

Q. Did you check that Exhibit No. 3 against Exhibit No. 4?

A. After I had made "Respondent Kinsman Exhibit 3."

Q. Then you noticed the difference, did you?

A. I cannot say that I did.

Q. Did you check all of the sheets of "Curtis No. 3" with "Curtis No. 4"?

A. I did not spend the same time on them that I did on this.

Q. Them and this is what?

A. "Curtis No. 4" with "Kinsman No. 3."

Q. Not the same time? A. No, sir.

Q. You have made a résumé on "Respondent Kinsman Exhibit No. 4." From which of these two documents did you make it—from "Curtis Exhibit No. 4" or from "Kinsman Exhibit No. 3"?

A. Indirectly from "Curtis No. 4."

Q. Indirectly? A. Yes. [1641—1552]

Q. What do you mean by "indirectly"?

A. Because I checked "Curtis No. 4" into that copy you have, No. 3, and from that into the résumé.

Q. So that the résumé is directly from "Kinsman Exhibit No. 3"; is that right? A. Yes, sir.

Mr. FRANK.—By the way, Mr. McClanahan, did I understand you offered this Exhibit No. 4 in evidence?

Mr. McCLANAHAN.—Yes.

Mr. FRANK.—For what purpose?

Mr. McCLANAHAN.—Oh, I don't remember. I

(Testimony of C. C. Kinsman.)

don't know that I stated any purpose.

Mr. FRANK.—Well, I would like to know the purpose now.

Mr. McCLANAHAN.—I decline to discuss it with you now.

Mr. FRANK.—You decline to give the purpose?

Mr. McCLANAHAN.—I think I stated at the time what the purpose was. I think you will find we had a long discussion over the introduction of that schedule. I may have stated the purpose. You will find it when the record is written up.

Mr. FRANK.—Very well; when we have the record written up to-morrow morning I may return to that, and I may find out what the purpose is.

Mr. McCLANAHAN.—Very well. I may have stated my purpose, I don't know.

Mr. FRANK.—Q. In making up that résumé, I understood you to say that you considered two dates—September 17th—as duplicates; is that right?

Mr. McCLANAHAN.—Two pages he said.

A. Yes, the first and the fourth page of September 17th.

Mr. FRANK.—Q. The first and the fourth pages under date of September 17th. Why did you take it upon yourself to decide that those were duplicates?
[1642—1553]

Mr. McCLANAHAN.—He did not take it upon himself to decide that they were duplicates.

A. I think I stated that in my opinion it was a duplicate.

(Testimony of C. C. Kinsman.)

Mr. FRANK.—Q. And what is your opinion based upon?

A. If you show me the sheets I will tell you.

Q. Here they are (handing).

Mr. McCLANAHAN.—Go ahead, Mr. Kinsman; don't wait.

Mr. FRANK.—Just one moment, Mr. Kinsman; this is my end of it.

A. On top of sheet 1, there appears, I think, 25 names; yes, 25 names. On sheet 4, of September 17th, the same 25 names appear in the same order, under the same job number, and the corresponding numbers of the men, the same straight time, the same overtime and the same total time, with the one exception of No. 508, S. Iverson, on the 4th page, and L. K. Siverson on page 1. On page 1 it appears 10 hours straight time, 2 hours overtime, and total 14 hours; and on the 4th page it appears 10 hours straight time, 4 hours overtime, and 18 hours total. With that exception the pages are identical. The reason I consider that a duplication is that a man cannot work 20 straight hours in one day.

Q. That is your explanation, is it?

A. Yes, sir.

Q. Before you became chief engineer of the "Hilonian," Mr. Kinsman, on what other vessel had you served as chief engineer?

A. You mean previous to going into the employ of the Matson Navigation Company?

Q. Yes.

A. I was chief engineer of the steamer "Ray-

(Testimony of C. C. Kinsman.)

mond," the steamer "Gray's Harbor," the steamer "Fair Oaks," the steamer "Lindauer," the steamer "Fair Oaks" again; I was guarantee engineer and chief engineer of the tug "Galena" [1643—1554] and I was chief engineer of the steamer "Majestic" on her trial trip.

Q. Those are all small coasting steamers, are they not? A. Yes.

Q. And that comprised a period of how long a time, that entire service?

A. Oh, two or three years.

Q. When did you go on the "Hilonian" as assistant? A. In May, 1909.

Q. And you were on her then, from that time continuously, as assistant, up to the time of the repairs in question? A. Yes, and during the repairs.

Q. During the time of these repairs, what did the engineer's crew do?

A. Overhauled all the auxiliaries, the boilers and boiler mountings.

Q. How long a time did it take them to do that?

A. They were engaged in that work all the time that vessel was laid up, from the time she arrived until she sailed.

Q. And you had charge of that crew?

A. Yes, sir.

Q. In other words, you, yourself, were engaged in that business of overhauling the auxiliaries, the boilers and the boiler-mountings during that time; is that right?

A. Yes, and also was assistant to Mr. Klitgaard

(Testimony of C. C. Kinsman.)

in regard to the other work.

Q. What did Mr. Klitgaard need of you in the other work? Could not one man take care of it?

A. I don't know what his idea was, but lots of times two heads are better than one.

Q. That is your explanation of it, is it?

A. Yes.

Q. Was Mr. Klitgaard doing anything else except taking care of the repair work?

A. Nothing else. [1644—1555]

Q. By the way, where is Mr. Klitgaard now?

A. At the present moment?

Q. Yes. A. I could not say.

Q. Well, don't confine yourself to the present moment; when did you last see him?

Mr. McCLANAHAN.—That is what you asked him about.

A. The last time I saw him was down on California Street.

Mr. FRANK.—Q. How long ago was it?

A. Oh, we had a drink together about 9 o'clock this morning.

Q. Where was Mr. Klitgaard when you say Mr. Christy came on board the vessel at quarantine?

A. On the deck, where he belonged.

Q. I suppose he does not belong in the engine-room when other people are coming to examine the engines.

A. I don't consider that his place on entering or leaving port.

Q. Well, you were neither entering nor leaving the port at that time, were you?

(Testimony of C. C. Kinsman.)

A. We were entering.

Q. The quarantine grounds are in port, are they not?

A. I do not consider the vessel entered until she is tied up to the dock. I want the chief engineer up on the deck for my own protection.

Q. You ordered him up on deck?

A. I did not say I ordered him. I said I want him up on deck for my own protection.

Q. And you are positive then that Mr. Christy came down and talked to you about the crank-shaft, are you? A. Yes.

Q. And argued it with you? A. Yes.

Q. Have you been going over these specifications, Mr. Kinsman, during the last month or so?

Mr. McCLANAHAN.—What specifications are you referring to? [1645—1556]

Mr. FRANK.—These exhibits, “Saunders Exhibit 1,” and the other exhibits in the case.

A. I have seen one copy; I don’t know which one it was.

Q. Now, is it not the fact that you have been spending most of your time for the last month or two, going over the evidence in this case and going over the specifications in the exhibits, checking up the exhibits here with counsel or with Mr. Diericx?

A. Principally on the time-book.

Q. Principally on the time-book?

A. I have gone over the others; yes.

Q. I understood you this morning to say you know nothing about these specifications, the identity of

(Testimony of C. C. Kinsman.)

these specifications that have been put in evidence here, except you think the paper of "Respondent Saunders Exhibit No. 1" is the kind of paper that the specifications handed to you were written upon; is that right?

A. No, I have testified that the contents were the same as the copy I had but that copy in particular approached the one nearer than any of the others, and one reason I said that was because of the size of the paper upon which it was written.

Q. You excluded page 3, did you not?

A. Yes.

Q. And would you not also exclude the last paragraph on page 2?

A. Not the whole paragraph, no.

Q. How much would you exclude?

A. (Reading:) "All bulkheads, gratings and bracings and pipes, and so forth removed during period of overhauling to facilitate work must be"—

Q. That was not on yours? A. No.

Q. You never saw that before until you saw this paper—is that right?

A. Not that I know of. I have no recollection of it. I believe I also testified that my copy stated 25 days [1646—1557] instead of 26.

Q. That was given you, as I understand you, when the vessel was about to go over to the works to have these repairs done?

A. After the time she came into port, that is, between the time she entered the port and the time she went over there. I do not recollect the exact date.

United States
Circuit Court of Appeals
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Apostles

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(Testimony of C. C. Kinsman.)

Q. Did Mr. Siverson or Mr. Wiliamson or any of these parties consult with you during the time these repairs were being made?

A. Yes, talked over the various jobs, both of them.

Q. How do you mean talked over the various jobs?

A. Discussed them.

Q. Discussed them incidentally or as a part of the business of doing the work?

A. No, I had no authority to order any work done.

Q. Then the discussions you are speaking of were only side talk? A. That is all.

Q. Now, with reference to testing the crank-shaft for alignment, will you just tell us how you would do it, if you had control of the job?

A. In this particular case?

Q. Yes, in this particular case. That is certainly all we are talking about.

A. I consider I give that shaft the best test possible in the running of it for three months.

Q. Is that your only answer?

A. You can test it between centers on a lathe.

Q. Now, are you finished? A. Yes.

Q. So you don't know how to test it by running a line?

Mr. McCLANAHAN.—I object to the question upon the ground that the witness has not so stated.

Mr. FRANK.—That is a good ground, but let the witness take care of that himself. [1647—1558]

Mr. McCLANAHAN.—He can do it.

Mr. FRANK.—After the suggestion is made; yes.

(Testimony of C. C. Kinsman.)

A. And I want to modify my answer to the other, that an absolute test of the truth of that shaft could not be got between the centers of a lathe.

Q. Well, you have been criticising the mode in which this thing was tested on board the ship?

A. Yes.

Q. Now, I want to know how you would have done it? A. As I said, by running the shaft.

Q. That is the only way? A. Yes, sir.

Q. Did you tell that to Mr. Klitgaard when they were testing it on the ship?

A. I was not present when they tested it. I was there only when they were preparing to test it.

Q. You knew what they were going to do. Why did you not advise Mr. Klitgaard?

A. I was in no position either to criticise or to advise.

Q. Do you think the work they did to prepare to test it involved no labor and could have been done by some man in 15 minutes—from that to an hour and a half? Is that right?

A. Did I say 15 minutes?

Q. You did. A. I don't think so.

Q. Well, then, correct it, if you did not.

A. I said from half an hour to an hour and a half. As far as I am personally concerned, had I been in charge of that work, I never would have cared to have tested that shaft.

Q. That is not the question now. You did not control it and did not advise the man who you say you were helping upon that job. I want to know

(Testimony of C. C. Kinsman.)

now if that is your opinion, that that could be tested in there without any labor, or involving but very little or no labor, and could have been done in from half an hour to an hour and a half. [1648—1559]

A. The check that they took on the shaft, yes, but I don't mean to say that that would determine the truth of the shaft.

Q. Then neither Mr. Klitgaard nor Mr. Putzar nor Mr. Siverson nor Mr. Williamson knew their business, did they? A. I did not say that.

Q. They took considerable more time than that, did they not?

A. I don't know what time they took.

C. Well, if they took more time than that, then they did not know their business?

A. I won't say that. Probably their opinion differs from mine and possibly they know more about it than I do. I am simply telling you my opinion.

Q. They would probably know more about the rest of the work too, how it should be done, and the length of time it should take, than you, would they not, Mr. Kinsman? A. Possibly.

Q. Why not more than possibly? Don't you think it is more than possibly?

A. Some of these men yes and some no.

Q. Well, Klitgaard yes?

A. I don't know so much about that.

Q. Siverson yes?

A. I have had, I think, more experience than Mr. Siverson.

Q. Well, Putzar yes?

(Testimony of C. C. Kinsman.)

A. No, nor I won't take my hat off to Mr. Putzar either as an engineer or as a mechanic.

Q. Then you know more about it than all of them?

A. I did not say that.

Q. Well, what did you mean, then, when you said some of them yes?

A. I said possibly some of them knew more about it than I did. Lew Williamson has had far more experience than I have had.

Q. And you don't think that Putzar or Klitgaard or Siverson have had more experience than you have had? A. In testing the truth of the shaft, no.

Q. When did you ever test a shaft before, of that nature? [1649—1560]

A. Well, I have checked the lines of several shafts.

Q. On some of these little steam schooners you were on? A. Yes.

Q. And that is all, is it? A. Yes.

Q. You have testified there was no work done for that testing except running the line; that is what you testify to, is it? A. Yes.

Q. How do you know that, when you were not there?

A. Well, I am testifying to what I know.

Q. And you have also testified that you were not there during that time?

A. Nights and Sundays, no, I was not.

Q. You have just told me that when they were testing the crank-shaft you were not present.

A. Yes, sir.

Q. What is that? A. I was not there.

(Testimony of C. C. Kinsman.)

Q. Then how do you know what they did?

A. I don't know.

Q. You don't know? A. No.

Q. Were you present when the intermediate shaft was taken out? A. Yes.

Q. When was that done?

A. I should say after the job was probably 10 days old.

Q. After the job was 10 days old?

A. Yes, 8 to 10 days old.

Q. How long did it take them to take it out?

A. I don't recall the actual number of hours.

Q. Was it hours? A. Yes.

Q. And not days?

A. I don't remember the exact time.

Q. You do not remember whether it was hours or days, do you? A. No, sir.

Mr. FRANK.—Well, I find I cannot follow this up with my notes. I will have to wait until I get the testimony [1650—1561] written up. It is now a quarter after 4.

Mr. McCLANAHAN.—Can't you proceed with your cross-examination?

Mr. FRANK.—No, I cannot, not in the shape it is in now.

Mr. McCLANAHAN.—Well, we will have to adjourn, then, until to-morrow morning at 10 o'clock.

(An adjournment was here taken until to-morrow, Thursday, November 2, 1911, at 10 A. M.) [1651—1562]

(Testimony of C. C. Kinsman.)

Thursday, November 2d, 1911.

C. C. KINSMAN, recalled for further cross-examination.

Mr. FRANK.—The nature of the record made yesterday afternoon, with the nature of the exhibits that have been introduced, makes it impossible for me to intelligently cross-examine this witness this morning. There is a great deal of technical matter in it, and matter of detail which is necessary for me to go over. Though I worked late last night and was at it again at 7 o'clock this morning, I have been unable to cover the ground, and for that reason I propose to postpone the further cross-examination of this witness until this afternoon, so that I may have an opportunity in the meantime to go over the record.

Mr. McCLANAHAN.—Your request, Mr. Frank, for a continuance until this afternoon is one that I dislike very much to decline to acquiesce to. I do not know that you fully appreciate that my time limit is rapidly expiring, and I do not think that the Court would favorably look upon the request for more time under the circumstances. Mr. Kinsman has been held here for this trial solely for several months and it is advisable on his account as well as on account of my client to get him through with. If you really think that by half-past one o'clock this afternoon you could do what you say you want to do I suppose I will have to consent, but I do it with great reluctance. For myself I cannot see the great detail which you have referred to that makes necessary so much labor to prepare for the cross-examina-

(Testimony of C. C. Kinsman.)

tion of this witness. The time-book introduced purports to be simply a copy of the original time-book. [1652—1563] If it is not a copy that is not very material. It can be found out on the argument. The summarization is not a very weighty matter. Aside from those two things I see nothing in his cross-examination that requires a very extended preparation for cross-examination.

Mr. FRANK.—I think the preparation for the direct examination occupied some two or three months. The preparation for the cross-examination ought to take two or three hours.

Mr. McCLANAHAN.—The preparation for the direct examination did not take two or three months. I think Mr. Kinsman and I were together on that matter for probably half an hour or an hour. You are speaking of Mr. Kinsman's preparation for his examination. That may have required a great deal of work because it is very laborious to go over that time-book. Cannot you, Mr. Frank, commence his cross-examination of the work that you have already gone over?

Mr. FRANK.—The proposition is this: I have some of this matter to go over to determine the extent of the cross-examination and I may determine not to cross-examine him after I have satisfied myself of this matter.

Mr. McCLANAHAN.—That is what I had concluded in my own mind as a guess, that you would not cross-examine Mr. Kinsman.

Mr. FRANK.—At present I am not determined on that question.

(Testimony of C. C. Kinsman.)

Mr. McCLANAHAN.—You do not think you want to go on now?

Mr. FRANK.—I do not think so. I think in all fairness I ought to have the opportunity to determine that question upon satisfying myself by means of these records as to the necessity of it.

Mr. McCLANAHAN.—If you insist upon it I shall have to consent. Shall we say half-past one?
[1653—1564]

Mr. FRANK.—All right, half-past one will suit me.

Mr. McCLANAHAN.—I have put myself to a great deal of inconvenience to attend this morning's session. I have another matter that is now being attended to by Mr. Derby, which is out of his line. I ought to have attended to it.

Mr. FRANK.—You will have the chance now.

Mr. McCLANAHAN.—If you had notified me of this possible move I should have made my arrangements accordingly.

Mr. FRANK.—I was working up to the time I came down here, Mr. McClanahan, on it. I have not let any grass grow. I had hopes of going on this morning.

(A recess was here taken until 1:30 P. M. [1654—1565])

AFTERNOON SESSION.

Mr. FRANK.—I think I will let Mr. Kinsman go.

[Testimony of Carl E. Klitgaard, for Respondent.]

CARL E. KLITGAARD, called for the respondent, sworn.

Mr. McCLANAHAN.—Q. What is your name?

A. Carl E. Klitgaard.

Q. How old are you? A. 35.

Q. What is your business? A. Engineer.

Q. How long have you held an engineer's license?

A. Any grade?

Q. Do you hold a chief engineer's license?

A. Yes, sir.

Q. How long have you held that?

A. 6 or 7 years.

Q. How long have you practiced your profession?

A. About 11 years.

Q. What ships have you been chief engineer of?

A. The "Nevadan," the "Coronado," the "Rainier," and the "Hilonian."

Q. Prior to your chiefship, what vessels did you sail on in the engine-room?

A. The "Alaskan," the "Nebraskan," "Nevadan," "J. L. Luchenback," "Centennial," "Santa Ana," "Wiefield" and "Cleveland." I think that is about all.

Q. Have you had any experience, Mr. Klitgaard, in repair work with the machinery of vessels?

A. Yes, sir.

Q. Will you please tell us what your experience has been.

A. All the vessels I have sailed on are old vessels and were all under repair most of the time.

(Testimony of Carl E. Klitgaard.)

Q. What had you to do with the repair work?

A. In some instances I had practically charge of the work.

Q. What does "in charge of the work" mean—what does it include?

A. Seeing that the work is done properly, in ship-shape manner, taking care of the men, seeing that they do their work all right.

Q. Have you had any experience in the matter of estimating the [1655—1566] value of repair work?

A. You mean prior?

Q. At any time in your life?

A. Do you mean before the work has been done, or after the work has been done?

Q. Both ways; if you wish to put it so.

A. I have given an estimate of what the work would be worth before it had been accomplished.

Q. What has been your experience in that line?

A. All the work that was done to the "Hilonian" from the time of my arrival on her, I have given estimates on.

Q. Is that your only experience?

A. No, sir. I have given estimates on some boiler work done to the "Santa Ana," and considerable on some new engine and boiler work done to the "Centennial."

Q. Any other?

A. I gave an estimate of the work of converting the "Alaskan" from a coal-burner to an oil-burner in New York. I cannot think of any other just now.

Q. What was your experience in estimating for

(Testimony of Carl E. Klitgaard.)

the repair work on the "Hilonian"? Do you mean the repair job that is now in controversy?

A. No, sir.

Q. What do you refer to?

A. She had many repairs done to her prior to that, both large and small; such as installation of various parts of machinery; the general overhauling that she received three years before that.

Q. Now, will you please state your experience with reference to making of estimates on the repair work done to the "Hilonian" during the period prior to the repairs in suit. State what estimates you have made.

A. I made an estimate on the work done to the donkey, boiler work, the retubing of the donkey boiler.

Q. Right there, may I ask you who did that work?

A. The retubing [1656—1567] was done by the United Engineering Works; the restaying was done by the Eureka Boiler Works. I also estimated—

Q. I understand you to say that you estimated on the donkey boiler work which was finally done by the United Engineering Works.

A. Yes, sir; and also some work prior to that.

Q. I want to know whether you estimated on that part of the work which was done by the United Engineering Works. A. The retubing?

Q. I don't know what it was.

A. No, sir, I did not estimate on that.

Q. What work was it you did estimate on?

A. On the restaying of the donkey boiler.

(Testimony of Carl E. Klitgaard.)

Q. Proceed and tell us in detail what you estimated on.

A. Reconstruction of the thrust on the steamer "Hilonian."

Q. Was that a contract job? A. Yes, sir.

Q. Who did the work on that?

A. The United Engineering Works.

Q. What was the difference between your estimate and their contract?

A. I cannot remember the exact figures; about \$40, I think.

Q. Not very much difference? A. No, sir.

Q. How much of a job was there, approximately?

A. Around \$700 or \$800.

Q. Proceed with your statement of the estimates you have made, if there are any others.

A. There are plenty of them, but they are so scattered. I gave Captain Matson an estimate for the installation of the circulating pump.

Q. By whom was that work done?

A. That was afterwards let to the United Engineering works.

Q. Do you know the figure at which it was let?

A. \$1350.

Q. Do you remember what your estimate was that was given to Captain Matson?

A. Between \$1300 and \$1400, I told Captain Matson. I do not just remember the figures; it is quite a while ago. [1657—1568]

Q. That is, it was a figure between \$1300 and \$1400? A. Yes, sir.

(Testimony of Carl E. Klitgaard.)

Q. What other estimates have you made, if you can remember them?

A. I do not remember having made any estimates of work that has later been let on contracts.

Q. Other than those that you have stated?

A. No, sir.

Q. Irrespective of whether it was let on contract, have you done other estimating?

A. On the "Hilonian"?

Q. Yes. A. Yes.

Q. When you say you have estimated on work, what do you mean by that?

A. I mean that I have computed the cost of time and material in doing the job.

Q. How long were you chief engineer of the "Hilonian"? A. About three years.

Q. When did your connection with her terminate?

A. On September 24th, 1909—about; it might have been the 23d.

Q. You were the chief engineer during the repairs in question at the United Engineering Works?

A. Yes, sir.

Q. Were there specifications drawn for these repairs? A. Yes, sir.

Q. Who drew them? A. I did.

Q. State whether at the time the specifications were drawn you were familiar with the condition of the machinery of the "Hilonian." A. Yes, sir.

Q. What were these specifications drawn for?

A. For certain repairs and overhauling that was necessary to the engines of the "Hilonian."

(Testimony of Carl E. Klitgaard.)

Q. State whether or no these necessary repairs were embodied in the specifications.

A. They were; yes.

Q. What was the condition of the "Hilonian's" crank-shaft prior to the work done in suit?

A. Her crank-shaft was all right. [1658—1569]

Q. Was there ever any question or dispute as to whether the crank-shaft was all right or not?

A. Yes, sir.

Q. State what you know about that dispute prior to the letting of this work.

A. I only know that Mr. Gray contended that the crank-shaft was bent or sprung and necessitated its removal to the shop to correct the error. That was a point that I contested very strongly right along.

Q. Did you have any other talk with any other representative of the United Engineering Works about the crank-shaft?

A. No, sir. I don't think I discussed the matter with anyone else. The idea seemed to me so utterly ridiculous that I did not want to put myself on record as having discussed it.

Q. Did or did not the specifications which you drew provide for the removal of the shaft to the shop? A. Yes.

Q. Why?

A. Because Mr. Gray had so impressed Captain Matson with the idea that the shaft was defective that Captain Matson thought it would be safest to call for its removal.

Q. You then consulted with Captain Matson about

(Testimony of Carl E. Klitgaard.)

your specifications?

A. Oh, yes; they were passed up to him for sanction.

Q. Do you know whether during the progress of the work on the "Hilonian" any representative of the United Engineering Works had a copy of the specifications which you had drawn? A. Yes, sir.

Q. Who?

A. Mr. Williamson, Mr. Siversen, and, I think, Mr. Nelson; I am not sure.

Q. Who connected with the Matson Navigation Company had copies of the specifications drawn by you?

A. Mr. Kinsman, Mr. Putzar, myself and Captain Saunders.

Q. Do you know whether bids were asked for covering the specifications which you had drawn?

A. Yes, sir. [1659—1570]

Q. Do you know who bid on that work?

A. The Union, the Risdon and the United.

Q. Were you present when the original bids were opened? A. Yes, sir.

A. I think I was present in the office when the original bids were opened.

Q. What office do you refer to?

A. The Matson Navigation Company.

Q. Who was present there representing the United Engineering Works? A. Mr. Gray.

Q. Who represented the other shops?

A. Mr. Barnes, I think, represented the Union, and I think Mr. Petersen from the Risdon; I am not sure.

(Testimony of Carl E. Klitgaard.)

Q. Who representing the Matson Navigation Company were there?

A. Captain Matson was there.

Q. Anyone else? A. Captain Saunders.

Q. Is that all?

A. As far as I remember, that is all.

Q. At that time was the contract let?

A. No, sir.

Q. Were you present at that time when there was a conversation between Mr. Gray and Captain Matson?

A. No, sir, I don't think I was. Captain Matson called Mr. Gray into his office and I went down to the ship.

Q. The bids were readvertised for, were they?

A. Yes, sir.

Q. Were you present when the second bids were opened?

A. No, sir. I came up after they were opened.

Q. How did you happen to come up?

A. Captain Saunders telephoned for me. We were receiving oil at that time and I could not get away just at the time he telephoned.

Q. When you reached the office did you see anyone connected with the United Engineering Works there?

A. I met Harry Gray just as he was going out.

Q. Going out of what? [1660—1571]

A. Out of the office.

Q. Did you have any conversation with him?

A. I asked him about how business was, or some-

(Testimony of Carl E. Klitgaard.)

thing like that. He said he had got the work.

Q. What work?

A. I think his words were "We have got the job."

Q. Did you know what he referred to?

A. Surely.

Q. What was it?

A. There was only one job in question, the specifications.

Q. What was the job? A. The contract job.

Q. The contract on the "Hilonian"?

A. Yes, sir.

Q. After that did you have any conversation with Mr. Gray about the work and prior to the ship's going to the yards?

A. Yes, sir, several discussions.

Q. What were they about?

A. About the work in general and what time the ship would be delivered at the yards; what I considered would be necessary to put the ship in seaworthy condition again, etc.

Q. Do you know when the ship was taken to the yards? A. Yes, sir.

Q. When? A. August 23d, 1909.

Q. What time of the day, forenoon or afternoon?

A. She left the dock about half-past 7 on Monday morning.

Q. Which dock? A. The Matson dock.

Q. On this side of the bay?

A. Yes, sir; she would get over to the United Engineering Works about 9 o'clock.

Q. Prior to leaving the dock on this side of the bay

(Testimony of Carl E. Klitgaard.)

were any of the employees of the United Engineering Works on the ship? A. Yes.

Q. What were they doing there?

A. There were some working on the donkey boiler, and some of them were working on the contract job down below.

Q. You mean by the contract job what? [1661—1572]

A. The contract specifications.

Q. The specifications that you have been testifying to? A. Yes, sir.

Q. The specifications that were let to the United Engineering Works? A. Yes, sir.

Q. How soon after the ship reached the yards of the United Engineering Works was work commenced on the ship? A. Right away.

Q. Who had charge of the mechanical end of the work for the Matson Navigation Company?

A. I did.

Q. Who for the United Engineering Works?

A. Mr. Williamson, I conclude.

Q. What was Mr. Kinsman's duty?

A. He was my first assistant.

Q. Do you know Mr. E. L. Putzar? A. Yes, sir.

Q. When did you first meet Mr. Putzar?

A. A few weeks prior to the letting of the contract.

Q. Where did you meet him?

A. Mr. Gray introduced him to me down at the United Engineering Works.

Q. What Gray?

(Testimony of Carl E. Klitgaard.)

A. Mr. Harry Gray, the secretary of the United Engineering Works.

Q. By the way, do you know Mr. Gray?

A. Yes, sir; he is a personal friend of mine.

Q. Was he a personal friend of yours at the time this work was being carried on?

A. Oh, yes, and has been for years.

Q. Did Mr. Putzar have anything to do with this repair work on the "Hilonian"?

A. He was timekeeper.

Q. Did you supervise his work at all of keeping time? A.No, sir.

Q. Did you know that he was keeping time?

A. I have seen him keep time.

Q. How did he do it?

A. I have seen him writing into his time-book.
[1662—1573]

Q. Is that what you mean by keeping time?

A. That is the only way I have seen him keep it. He never checked the men on or off of the ship that I know of.

Q. By his time-book, do you refer to this book "Curtiss' Exhibit No. 4"? (Pointing.)

A. It was a book something like that. I never saw it at close enough quarters to be able to say.

Q. Please look at that book. You could not tell whether that was his book or not? A. No, sir.

Q. You know his writing? A. No, sir.

Q. You have seen this book a great many times, have you?

(Testimony of Carl E. Klitgaard.)

Mr. FRANK.—He never said he had seen this book before.

Mr. McCLANAHAN.—Q. I ask you if you have seen this book before. A. Yes, sir.

Q. But you do not know if this was the book you saw him use at that time? A. No, sir.

Q. You saw him using a book similar to it?

A. Yes, sir, very similar.

Q. Where was he using it?

A. In Mr. Williamson's office over at the United Engineering Works.

Q. Did you ever have any conversation with Mr. Putzar in regard to that book or his use of it?

A. I asked him what he was doing. "Keeping his time," he told me.

Q. What did you see that he was doing?

A. As far as I remember, I saw him copying from some yellow slips like that where your pencil is on.

Q. This scratch paper? A. Yes, sir.

Q. Copying that where?

A. Copying from that something into this.

Q. And by "this" you refer to the book which looks something like the book he had? A. Yes, sir.

[1663—1574]

Q. Did Mr. Putzar have a room on the ship?

A. No, sir.

Q. Who did have?

A. Mr. Kinsman—you just want the engineer's department? Mr. Kinsman and myself in the engineer's department.

Q. During the progress of the repairs on the "Hi-

(Testimony of Carl E. Klitgaard.)

lonian" who stayed on the ship at night of the crew of the "Hilonian"? A. The engineer's crew.

Q. I will not limit it to the engineer's crew.

A. I think the mate and I were the only ones that stayed on board—Mr. Petersen.

Q. You were the only one of the engineer's crew?

A. Yes, sir, as far as I know.

Q. State how often you were on the ship at night.

A. Pretty mostly every night; with the exception of four or five nights. I was on there every night.

Q. Were you on there every night when work was being carried on by the United Engineering Works?

A. Yes, sir.

Q. Did you ever see Mr. Putzar on the ship at night?

A. I don't remember ever seeing him on at night; he may have been there, though.

Q. Do you remember seeing him on the ship in the daytime? A. Yes.

Q. Have you any knowledge of whether Mr. Putzar left the ship at the close of the day's work or not?

A. Whether he left the ship?

Q. Yes.

A. I know on several occasions I have seen him take the train.

Q. Do you know when Mr. Putzar reported for work in the mornings?

A. Generally just about the time that the men turned to.

Q. After the "Hilonian" was placed in the yards of the United Engineering Works was this question

(Testimony of Carl E. Klitgaard.)

of the necessity for the removal of the crank-shaft determined? A. Yes, sir.

Q. Who determined it? [1664—1575]

A. Mr. Gray and Mr. Williamson, Mr. Putzar and myself.

Q. How was it determined?

A. Mr. Williamson and Mr. Putzar ran a line on the shaft in an endeavor to find out whether it was sprung or not.

Q. And what was the result of this endeavor?

A. They decided that the line showed the shaft to be absolutely true.

Q. Was there a time limit on the acceptance of the job by the United Engineering Works?

A. Yes, sir.

Q. What was it?

A. 25 days from the time of the delivery of the vessel at their yards.

Q. Do you know, Mr. Klitgaard, why on the morning of August 23d, 1909, the "Hilonian" was taken to the yards of the United Engineering Works?

A. Yes, sir.

Q. What was she taken there for?

A. To have the repairs done under the specifications.

Q. Do you know what, if anything, was done in preparation of receiving the "Hilonian" at the yards on the morning?

A. They had a berth ready for her and men waiting for her to come in—Mr. Merriman and his gang.

Q. Do you know whether the United Engineering

(Testimony of Carl E. Klitgaard.)

Works or any representative of the works knew before the morning of August 23d that the "Hilonian" was going to their yards? A. Yes, sir.

Q. Who knew that? A. Mr. Gray.

Q. Are you familiar with the work that was done to the "Hilonian" at the time, I mean when she was delivered to the United Engineering Works in August, 1909? A. Am I familiar with it?

Q. Yes. A. Yes, sir.

Q. How long was the vessel at the works of the United Engineering Works?

A. 29 days, I think; I am not sure. [1665—1576]

Q. In other words, do you know the date she left there?

A. She left the morning of the 22d of September.

Q. Are you familiar with the work that was performed on the ship from August 23d to that time?

A. Yes, sir.

Q. Was the work called for by the specifications which you drew carried out?

A. Not as it was on the original specifications, no.

Q. If you are shown a copy of the specifications, can you tell what was departed from?

A. Yes, sir.

Q. I show you "Respondent Sanders' Exhibit No. 1" and ask you if that paper contains a list of the specification work as drawn by you originally. Read it carefully, Mr. Klitgaard. A. Yes, sir.

Q. Now, will you please take that exhibit and go through each item of the specifications and state wherein there were departures from the work called

(Testimony of Carl E. Klitgaard.)

for by the items.

A. In item 1 it says, in the latter part of that item, "enlarge studs on air pump, joint to condenser"; they were not enlarged, but additional studs were put in there.

Q. For what purpose?

A. To answer the same purpose as enlarging the studs.

Q. Did you know of that change?

A. Yes, sir. Mr. Williamson asked me if it would not be just the same to do that as enlarge the studs. I told him it would be immaterial to me, as long as we got the necessary strength there.

Q. With that explanation, was the first item of the specifications carried out as called for?

A. Yes, sir.

Q. Proceed.

A. The second item is "remove L. E. Valve and face. Plane seats of both, etc." That work was not found necessary.

Q. What work? The work called for by specification 2?

A. The work called for by the specifications, but in recompense [1666—1577] for that Mr. Williamson and I agreed that we would fit a 12-inch balance piston on top of the low-pressure valve, pipe it up to the condenser and lengthen the valve stems, fit the nuts, etc., that were found necessary to fit the new conditions. In other words, that was to be a recompense for the second item.

Q. I will ask you, Mr. Klitgaard, what you mean

(Testimony of Carl E. Klitgaard.)

by "recompense." What was the understanding?

A. The understanding was that the work was being done in recompense for to keep the original specifications intact so that there would be no debits or credits.

Q. Under that item?

A. Under that item; that the figures which they had given us for these original specifications would remain intact; that this work with the balance cylinder was to take the place of the second item which was not found necessary.

Q. Who was present when that agreement was entered into?

A. Mr. Williamson and I entered in that agreement, and it was subsequently put up to Captain Saunders; he referred it back to Captain Matson and reported to me that Captain Matson had said that as long as I thought it was all right, to go ahead with it. Mr. Williamson was present when he reported that to me. He asked Mr. Williamson if it would be all right.

Q. Who did?

A. Captain Saunders did. He said, "Mr. Williamson said that was all right." Later I told Mr. Gray about it and he told me that any alterations or things of that nature that in future turned up, as long as Mr. Williamson was satisfied, he would be satisfied; that any agreement I came to with Mr. Williamson, as far as recompense matters were concerned, was all right.

Q. Did Mr. Gray then know of this recompense

(Testimony of Carl E. Klitgaard.)

work under this second item of the specifications?

A. Yes, sir. I told him about it. That is how we came to discuss the matter. [1667—1578]

Q. Now, Mr. Klitgaard, as an engineer do you know whether there is any material difference in the value of the work as called for under the second item of the specification and the recompense work which was done in place of that item?

Mr. FRANK.—I object to that as immaterial under the present state of the evidence.

A. No, sir.

Mr. McCLANAHAN.—Q. What do you mean by that answer, that you do know?

A. No, sir, there is no material difference. The matter was figured very closely at the time.

Q. Who figured on the matter?

A. Mr. Williamson and myself.

Q. Pass on to the third item.

A. The third item was completed as specified, No. 4—

Q. Let me suggest to you, Mr. Klitgaard, that where appropriate you say the item was completed as called for with this exception, if there are any such, and that will save time.

A. No. 4, "Make tight H. P. and L. P. Guides for water circulation, as specified." Instead of putting in these extra screw stays which it calls for here, heavier plates were put on the back of the guides. Instead of reconstrucing the H. P. and L. P. shoes, as the specification calls for, there were new castings made.

(Testimony of Carl E. Klitgaard.)

Q. By "castings" you mean new shoes, do you not?

A. New shoes were made and cast in the machine and rebabbitted. The agreement was between Mr. Williamson and myself that we would pay for the babbitting of the shoes; in other respects, the changes that had been made in this item were in recompense for what was not done under the item. Do you know what I mean?

Q. What do you mean by saying, "We would pay for the babbitting of the new shoes"?

A. We were to allow them for so much metal in the new shoes. [1668—1579]

Q. For what?

A. Merely because if they had to cast new shoes instead of reconstructing the shoes it would come a little more expensive.

Q. By reason of what? What would make it more expensive?

A. By reason of the fact that patterns had to be made and new castings made, and a great deal more machining had to be done on them.

Q. Now, to cover that extra expense, what was the agreement?

A. The agreement was that we were to allow them the price of the challenge metal that was put on these shoes.

Q. In addition to the contract?

A. In addition to the contract.

Q. How was that agreement to leave item four?

A. That was to leave item 4 intact with the exception of this challenge metal, which was an extra.

(Testimony of Carl E. Klitgaard.)

Q. Who was that agreement made with?

A. Mr. Williamson and myself.

Q. Anyone present?

A. Mr. Putzar was present.

Q. Anyone else?

A. No, sir; I don't think so. Mr. Gray was subsequently told about it.

Q. Who by? A. By myself.

Q. What was the conversation with Mr. Gray with reference to it?

A. He said, "Oh, that is all right."

Q. Was there any figuring done at that time as to the cost of the change? A. Yes, sir.

Q. Who did the figuring?

A. Mr. Williamson and myself.

Q. Was the amount of challenge metal agreed upon or discussed? A. No, sir.

Q. Do you know how much challenge metal was used for those shoes?

A. 72 or 74 pounds, I think; both of them.

Q. 72 or 74 pounds for each shoes?

A. No, sir; it was 36 or 37 pounds in each shoe.

[1669—1580]

Q. And how many shoes were there, two?

A. Two.

Q. Now, proceed.

A. No. 5—shall I read the item?

Q. Do not read the item, but just refer to it.

A. The H. P. and L. P. eccentric straps, they were not remetalled or refitted. No work at all was done to the H. P. eccentric straps. In recompense for do-

(Testimony of Carl E. Klitgaard.)

ing this work the H. P. and L. P. eccentric straps were taken up to the shop and two brass liners were cast and fitted on to them. These liners were pocketed and filled with challenge metal. Then the whole was taken down to the ship and fitted to the sheaves.

Q. With whom was this arrangement made?

A. With Mr. Williamson, Mr. Putzar and myself.

Q. Tell us the details of the arrangement.

A. The arrangement was that all this work was done as I have described here, and the low pressure eccentric sheaves were to be trued up in the lathe and we were to allow them 300 pounds of bronze.

Q. What was that allowance for?

A. Because otherwise the work would not be a fair compensation for the remetalling and refitting of the high pressure eccentric straps.

Q. Was any figuring done on that item?

A. Yes, sir. Mr. Williamson and Mr. Putzar did all the figuring. I later figured it.

Q. Who was it agreed to allow the 300 pounds of bronze? A. I agreed to that.

Q. Did any representative of the United Engineering Works other than Mr. Williamson know of that recompense work?

A. Mr. Gray come around after the work had been started. I explained the matter to him. He kicked so much about this—he said he was getting the worst end of it—that finally I agreed to allow them [1670—1581] for the challenge metal that was put in there, too.

(Testimony of Carl E. Klitgaard.)

Q. Who did you agree with?

A. With Gray. I told him I would give him the challenge metal too.

Q. What did he say?

A. "All right," he said, "let it go at that."

Q. How much challenge metal was agreed to be allowed as an extra?

A. I don't remember. It was weighed out; it seems to me now that that was in the sheaves, that there were 74 pounds of metal. I don't remember just now.

Q. Instead of in the shoes? A. Yes, sir.

Q. You are not quite clear on that, that is, you are not clear whether it was 36 pounds in the shoes?

A. Or whether it was in the sheaves.

Q. Have you any means of clearing your mind upon that point? A. I have my note-book.

Q. Where is it? A. In my pocket.

Q. Notes made at the time? A. Yes, sir.

Q. Will you please refer to your note-book on the two points and see if you can refresh your mind?

A. (After examination.) In the shoes it should be 46 pounds in each.

Q. Instead of 36? A. Yes, sir.

Q. What were in the eccentrics?

A. In the eccentrics 36 pounds of challenge metal.

Q. And how many eccentrics were there?

A. Just one set; but that is top and bottom.

Q. That would be 36 pounds in the whole job?

A. No, sir; that would be 72 pounds.

Q. Proceed now.

(Testimony of Carl E. Klitgaard.)

A. No. 6 was completed. No. 7, the iron column which was referred to in this item was not put in, but instead of that, in recompense, a bronze patch was fitted on. [1671—1582]

Q. With whom was that arrangement made?

A. Mr. Gray, Mr. Williamson, Mr. Putzar, Captain Saunders, and myself.

Q. Please give the details of the understanding with reference to No. 7?

A. Why, there was a good deal of discussion about that. Mr. Gray suggested the patch.

Q. Instead of what?

A. Instead of putting up the column, because the column would be so much in the road, and would not be a very easy thing to fit on; so he suggested putting a bronze patch on, fitting a bronze patch to the housing to take in the condenser.

Q. Give us the details of the discussion which followed his suggestion?

A. We all went down in the engine-room and looked the situation over, and finally decided that his suggestion was a very good one. I asked Mr. Gray if he was willing to put in this patch as a recompense for the iron column or if one would balance the other; he said yes, provided, that the weight of metal in this bronze patch did not amount to too much. We agreed that if it did not weigh over 900 pounds, it would be a fair recompense, and anything over 900 pounds we would pay for the extra bronze.

Q. Do you know if the patch did weigh over 900 pounds?

(Testimony of Carl E. Klitgaard.)

A. No, sir, it did not. 898 pounds the patch weighed, according to my note-book.

Q. That is according to your note-book, you say?

A. Yes, sir.

Q. Who was present when that final agreement was made?

A. Mr. Gray, Mr. Williamson, Mr. Putzar, Captain Saunders and myself.

Q. Is that patch an entire substitute for No. 7?

A. An entire substitute, yes. No. 8 was completed as specified.

Q. Proceed. [1672—1583]

A. No. 9, the items, I think, were all done as specified, with the exception that the crank-shaft was not removed from the ship.

Q. Was there any discussion as to any debit or credit on the contract for the nonremoval of the crank-shaft to the shop?

A. Yes, sir; that is why we had a timekeeper.

Q. Who told you that?

A. Captain Matson told me.

Mr. FRANK.—I move to strike that out.

Mr. McCLANAHAN.—Q. That is all you know about it? A. That is all.

Q. Now, pass on.

A. No. 10 was completed as specified.

Q. Pass on.

A. No. 11 also. No. 12 was completed with the exception that the engine-room tank-tops were not covered with cement. She was cemented under the boilers only.

(Testimony of Carl E. Klitgaard.)

Q. Was the bitumastic solution put on the tank-tops?

A. Yes, sir, with the exception that it was not put in the crank-pits.

Q. Why was the cement not put on?

A. Mostly due to a lack of time, etc. Those men were constantly in the road working on the tank-tops.

Q. Proceed.

A. No. 13 was completed as specified. No. 14, the windlass was not repaired, after a consultation with Captain Saunders and Mr. Williamson; we found it was not necessary; and instead of that as recompense, we put two channel iron supports under the break of the forecastle head.

Q. Can you give me the details of that agreement?

A. Why, Captain Johnston was over one day, the former master of the "Hilonian," and we went up forward to look at the damage that the ship had sustained during some bad weather on some trip recently.

Q. When you say "we," who do you refer to?
[1673—1584]

A. Captain Saunders, Captain Johnston and myself. Mr. Williamson was with us.

Q. Proceed.

A. And while forward on the forecastle-head we discussed this matter of repairing the windlass. Captain Johnston was of the opinion that as the capstan on the forecastle-head was never used, it would be throwing money away to do that repair work, and

(Testimony of Carl E. Klitgaard.)

suggested that in place of that we put some extra supports under the forecastle-head. Consequently, Mr. Williamson and I talked the matter over and came to the conclusion that two channel iron stanchions under there would counterbalance this item of repairing the windlass.

Q. Did you do any figuring on that?

A. Mr. Williamson did a little figuring; I did not do any.

Q. Proceed. A. No. 15 was completed.

Q. Did you ever during the progress of the work there have any understanding from Mr. Williamson or from Mr. Gray or from any other representative of the United Engineering Works that the specifications under which their bid had been accepted were not to be followed out, or were to be disregarded except in the particulars in which you have testified?

A. They worked according to the specifications right along.

Q. Please read my question to the witness, Mr. Reporter, and I will call for an additional answer.

(The Reporter reads the last question.)

A. No, sir.

Q. In the progress of the work done under the specifications, was there ever uncovered any work which was found necessary to do? A. No, sir.

Q. Besides the work done under the specifications as testified to [1674—1585] by you, was there any other work done on the "Hilonian" at this time?

A. Yes, sir.

Q. Can you state generally what it was?

(Testimony of Carl E. Klitgaard.)

A. There were several minor contracts entered into.

Q. Do you refer to the minor contracts attached to the libel in this case?

Mr. FRANK.—There are no minor contracts attached to the libel; there are nothing but bills there.

Mr. McCLANAHAN.—Q. You refer to the minor contracts as the work done under the bills attached to the libel?

A. This is a contract.

Q. You refer to what?

A. The remetalling of the five spring bearings. This is Schedule 4.

Q. That was a minor contract?

A. Yes, sir; these are minor contracts.

Q. Please read them off into the record.

A. "Grind off I. P. piston rods."

Q. Excuse me; before we leave the remetalling of the five spring bearings, which you call a minor contract, I will ask you who it was that made that contract? A. Mr. Gray.

Q. With whom? A. With myself.

Q. At an agreed price?

A. \$66 for each spring bearing. "Grind off I. P. Piston rod."

Q. How much was the agreed price for that?

A. \$50.

Q. Who agreed to that?

A. Mr. Putzar and Mr. Williamson made that price.

Q. Did you have anything to do with it?

(Testimony of Carl E. Klitgaard.)

A. No, sir, I did not know it until I saw the piston rod in the lathe.

Q. Did Mr. Putzar have any authority to make that contract? A. No, sir.

Q. What about the remetalling of the horseshoes in thrust [1675—1586] on one side only, as called for by Schedule 4? Do you know anything about that?

A. I don't know anything about that price.

Q. By "that price" you refer to what?

A. \$146.88.

Q. What do you know about the item itself?

A. I know we agreed to pay for the metal which would fill one side of each shoe; "plane to size groove for oil and fit to collars." That comes under No. 9 of the original specifications.

Q. Proceed.

A. "Supply and fit in place 5— $\frac{3}{8}$ " check floor plates." The agreed price on that was \$10 per plate.

Q. Who made that agreement?

A. It was made between Mr. Putzar and Mr. Williamson without my knowledge.

Q. How did you know that they had agreed on that?

A. Mr. Williamson told me afterwards when the plates were going down.

Q. When the plates were going down where?

A. Down into the engine-room.

Q. What were those plates used for?

A. To replace broken plates in the engine-room.

(Testimony of Carl E. Klitgaard.)

Q. Broken when the vessel was sent over to the shop first?

A. Two of them were broken, or three.

Q. What about the other two?

A. Then there was one very thin one that Mr. Putzar condemned; the fifth one I don't know anything about.

Q. Proceed.

A. "New elbow in donkey boiler stack, \$40."

Q. What do you know about that contract?

A. That was made between Mr. Putzar, Mr. Williamson and Mr. Taylor, and I subsequently sanctioned that.

Q. Now, turn to Schedule 5.

A. "Repairs to ladders, floor plates and gratings in engine-room, \$190."

Q. What do you know about that?

A. That arrangement was made [1676—1587] by Mr. Putzar and Mr. Williamson.

Mr. FRANK.—I want to know, Mr. McClanahan, why you, who are so careful not to get so much record here, are going into that detail when you have admitted the correctness of the bill?

Mr. McCLANAHAN.—I want to show, Mr. Frank, clearly all the work that was done on the ship and the conditions under which it was done. In your evidence you seem to be unable to think that a possibility, and that is my way of doing it.

A. (Contg.) About these ladders and floor plates, Mr. Putzar and Mr. Williamson had agreed on a certain price for that work before I came down to

(Testimony of Carl E. Klitgaard.)

the ship. I had been up to the shop for something or other. When Mr. Williamson told me about it. I objected very strenuously to that. I did not consider the work by any means was at all necessary. After a good deal of discussion with Mr. Williamson, we reduced the price to \$190 from the original agreement.

Q. Turn to the next schedule, Schedule 6.

A. "Renewed 35 rivets in connection. Caulk 70' of seam. Renew one tube in main boiler \$140." That was a contract entered into by Mr. Williamson, Mr. Hurley and myself.

Q. Proceed. The next is Schedule 7.

A. Schedule 7. "Make and instal 1 brake rig, \$140." That contract was entered into by Mr. Williamson, Mr. Putzar and myself.

Q. Proceed.

A. Schedule 8. "Cast and finish 4 new bearing boxes for main journals."

Q. Give the price of it.

A. \$1350. That was a contract between Mr. Gray and Captain Matson.

Q. Proceed.

A. Schedule 9. "Make new smokestack 8' by 46'. Remove old stack and instal new one. Enlarge casing below umbrella. Make [1677—1588] new top for breeching and 2 turnbuckle hangers," total, \$1140.

Q. What do you know about that schedule?

A. The smokestack was a contract between Captain Matson and Mr. Gray, made in the presence of

(Testimony of Carl E. Klitgaard.)

Captain Saunders and myself.

Q. When was that made, do you know?

A. That was made the day before Captain Matson went east, I think whatever day that was; one day before she went on the drydock.

Q. What was the agreed price? A. \$900.

Q. Do you remember the conversation, or any part of it that led to the making of that contract?

A. Yes, sir. I reported to Captain Matson that the old smokestack was badly eaten away at its base, and for some distance up the seams were gone. Captain Matson asked Gray how much he wanted to take out the stack and put in a new one. Mr. Gray said, after a little figuring, "\$900." Captain Matson said "All right, go ahead, and put it in." That is about as far as I remember. Then Captain Matson asked him whether it would delay the vessel any beyond the 25 days, to which Mr. Gray said no.

Q. What do you know about the item in Schedule 9, charged for at \$60?

A. I will tell you. When they took the stack out we found the stack badly burned around where the casing was, and came to the conclusion it was because the casing was not large enough; there was not room enough around the umbrella; then Mr. Putzar and Mr. Christy entered into some form of an agreement to renew this casing around the umbrella. While they were still discussing it I came down and objected to it very strenuously on the strength that it belonged to the smokestack contract; we discussed the matter for quite a little while; finally Mr. Christy

(Testimony of Carl E. Klitgaard.)

got angry and he said, "All right, how much is it worth?" I said, "We will give you \$60," which was about half of what had been suggested. [1678—1589]

Q. You say you contended that that belonged to the smokestack contract? A. Most assuredly.

Q. And you finally agreed to allow \$60?

A. Yes, sir.

Q. Why, if it belonged to the smokestack contract?

A. Captain Matson was east and it was near the completion of the vessel. I figured that it was worth more than \$60 to the Matson Navigation Company to have the work proceed as rapidly as possible; consequently, rather than dispute the matter I allowed them \$60. Captain Saunders was not to be had. He was loading the "Lurline" at that time.

Q. What is your opinion now with reference to that particular item as to whether it belongs to the smokestack contract as originally entered into or not?

Mr. FRANK.—That is immaterial now. They have placed their own construction on it by the other contract that they have made.

A. Certainly, it was.

Mr. McCLANAHAN.—Q. Certainly, it was what?

A. Part of the smokestack contract.

Q. What have you got to say to the next item of \$180?

A. "Made new top for breeching and made 2 new turnbuckle hangers." I am of the opinion that that

(Testimony of Carl E. Klitgaard.)

would apply to the smokestack contract too.

Q. Tell me about the contract, all you know.

A. I don't remember much about that contract.

Q. Who made it?

A. Mr. Putzar made it with Mr. Williamson and Mr. Hurley.

Q. Turn to Schedule 10.

A. "Renew 2 bottom tube sheets in forced draughts. Renew 2 back heads, 2 division head and 4 tube in smoke box \$725." That was a contract entered into between Mr. Gray, [1679—1590] Captain Saunders and myself.

Q. When was that contract entered into, the last one that covered Schedule 10?

A. If I remember right, it was entered into on the ship.

Q. When—at what time?

A. While she was laying over there.

Q. Besides these minor contracts of which you have just testified, do you know of any other contracts between the United Engineering Works and the Matson Navigation Company that were being fulfilled at the time of the work in question?

A. Yes, sir; the retubing of the donkey boilers and the installation of an independent circulating pump.

Q. Was there any work being done on the Howden force draught system? A. Yes, sir.

Q. Was that a contract? A. Yes, sir.

Q. A prior contract? A. Yes, sir.

Q. State whether or no these three latter contracts, one on the circulating pump, one on the don-

(Testimony of Carl E. Klitgaard.)

key boiler, and the Howden force draught system, were made at the time the "Hilonian" was at the yards of the United Engineering Works or prior.

A. They were made long prior to that. The donkey boiler contract was let the year preceding, in the fall of the year.

Q. Aside from the work which you have thus far enumerated, was there any other work done on the "Hilonian" at this time?

A. Some minor jobs, yes.

Q. Do you remember any work being done on the tank-top?

A. Yes, sir. No. 4 port tank-top.

Q. Were you present at a discussion in regard to that work when Captain Matson was on the ship?

A. Yes, sir.

Q. What is your understanding of the discussion? State who was present at the time. [1680—1591]

A. Mr. Gray, Captain Matson, and Captain Saunders, and Mr. Tenny, I think, from Honolulu, and Captain Johnston was present.

Q. At the time of this conversation do you know if the United Engineering Works had made a bid on that tank-top job? A. Yes, sir.

Q. I show you "Respondent Matson Exhibit No. 1" and ask you if you recognize that paper (handing). A. Yes, sir.

Q. What is it?

A. That is a bid from the United Engineering Works.

Q. For what?

(Testimony of Carl E. Klitgaard.)

A. For the renewal of the No. 4 tank-tops.

Q. Do you know whether that bid was accepted or not? A. No, sir, it was not accepted.

Q. What was the conversation?

A. Captain Matson thought it was too much money.

Q. Proceed; what was the understanding?

A. The No. 4 tank-tops, something had to be done to them, so Captain Matson told Gray that he would not accept his bid, but to go ahead with the work and have the time kept distinctly separate from all other work being done on the ship. Gray promised him that it would not under any consideration go over \$1200. [In pencil:] \$1250.

Q. Do you know, Mr. Klitgaard, the work that was done on No. 4 tank-tops? A. Yes, sir.

Q. Will you please examine that bid and state whether or no the work called for in that bid was done on the No. 4 tank-top?

A. Not entirely as it is stated here; no.

Q. During the repairs to the "Hilonian" was anything done to the No. 4 tank-top on the starboard side? A. No, sir.

Q. During the repairs state what was done to the tank-top on the port side?

A. With the exception of a very small plate where the after bulkhead and a plate at the forward bulkhead of the port side, all the tank-tops were renewed; the marginal plate [1681—1592] was not renewed, nor was the plate in the shaft alley itself; all of which from the center line, belongs to No. 4 tank-top of the port side.

(Testimony of Carl E. Klitgaard.)

Q. The center line of what?

A. The center line of the ship.

Q. I show you "Kinsman Exhibit No. 1" and ask you if that is a fair representation of No. 4 tank-top. (Handing.)

A. Yes, sir; that gives a pretty good idea of it.

Q. What part of the No. 4 tank-top on the port side as shown by the diagram was renewed?

A. The blank part; the part with the "F" in it.

Q. Mr. Klitgaard, I hand you "Kinsman's Exhibit No. 2," which is represented by that witness to be a segregation of schedule 1 attached to the libel, which purports to be some of the work done on the "Hilonian," and ask you if you will please examine that carefully and see if you can answer to each of the 140 items found on the exhibit, taking them one at a time, as to whether or not the work was performed, beginning with No. 1—performed as stated in the list that you have.

A. No. 1 should be "partially renewed."

Q. Make all your comments on No. 1.

Mr. FRANK.—Q. What is partially renewed?

A. No. 4 tank-tops on the port side.

Mr. McCLANAHAN.—Q. I think I can shorten this examination by asking you specifically in regard to the various numbers. You say No. 1 is correct, but it should be there was a partial renewal of No. 4 tank-tops on the port side? A. Yes, sir.

Q. I call your attention to No. 9 and ask you if you have any comment to make on it. [1682—1593]

Mr. FRANK.—How about the intervening ones?

(Testimony of Carl E. Klitgaard.)

Are you admitting them—between 1 and 9?

Mr. McCLANAHAN.—You can make your own inference.

Mr. FRANK.—I guess I will.

A. Yes, sir. It says, “Made and fitted 2 sets iron guards”; as far as I remember, the iron guards were merely repaired and refitted.

Mr. McCLANAHAN.—Q. I call your attention to item 24 and ask you the same question.

A. I know there were no bottom blow line hangers on there.

Q. On where? A. On the ship.

Q. Were there at the time of the repair work being done over there in August and September, 1909?

A. No, sir.

Q. I will ask you if that item is or is not a part of any of the minor contracts which you have testified to.

A. Yes, sir; it is a part of the smokestack contract.

Q. I call your attention to item 27 and ask you the same question.

A. Yes, sir; that is a part of the smokestack contract.

Q. I call your attention to item 29 and ask you the same question.

A. Yes, sir; that certainly is, too.

Q. I call your attention to item 41 and ask you if you have any comment to make on that item.

A. Yes, sir; those rollers were never raised.

Q. I call your attention to item 23 and ask you the

(Testimony of Carl E. Klitgaard.)

same question.

A. All the fitting was done by the ship's crew.

Q. The "Hilonian's" crew? A. Yes, sir.

Q. I call your attention to item 54 and ask you the same question.

A. Four pipes to that manifold.

Q. I am referring to 54, not 58. A. 54.

[1683—1594]

Q. Proceed; you know more about it than I do.

A. Three of those pipes were of lead, which work was done by the Smith Iron Works. [In pencil:] Coppersmith.

Q. I call your attention to item 58 and ask you the same question.

A. That is part of assembling under the original specifications; that is part of the assembling. That was done all right. 58. "All copper pipes connected."

Q. What do you mean by assembling under the original specifications?

A. To put the ship in seaworthy condition again.

Q. I call your attention to item 59 and ask you if that work belongs to any of the schedules of the libel covering the minor contracts.

A. There were three fittings supplied, that this probably refers to; it would be an extra.

Q. What were those fittings?

A. A nipple, a sleeve and a union.

Q. And if that item 59 refers to those three items it is an extra? A. It is an extra.

Q. I call your attention to item 62 and ask you

(Testimony of Carl E. Klitgaard.)

whether or no that work belongs to any part of the original specifications.

A. Yes, sir; the removal of the bilge pump belongs to the specifications, the item dealing with the renewal of joints under the air pump.

Q. What items of the specifications is that?

A. Item 1.

Q. Have you any other comment to make on that item 62? A. No, sir; I think that is all.

Q. I call your attention to item 70 and ask you whether or no that items belong to any part of the original specifications?

A. Yes, sir; that belongs to No. 9. The thrust shaft coupling was not turned down, though.

Q. I call your attention to 71 and ask you the same question.

A. Part of that belongs to No. 9. [1684—1595]

Q. What part? A. Bearing trued up.

Q. What does the other belong to?

A. The shaft turned down at each end of the thrust collars. That is an extra.

Q. I will call your attention to item No. 74 and ask you the same question.

A. The work done on this piece of shafting was necessitated to bring the shaft in proper alignment, and consequently comes under 9 in the specifications. Incidentally that shaft was not turned down, but simply faced off.

Q. The forward coupling was not turned down?

A. No, sir.

Q. Simply faced off? A. Yes, sir.

(Testimony of Carl E. Klitgaard.)

Q. I call your attention to item No. 75 and ask you the same question.

A. That belongs to No. 9 of the original specifications.

Q. I call your attention to No. 76 and ask you the same question.

A. That also belongs to No. 9.

Q. I call your attention to No. 77 and ask you the same question. A. That also belongs to No. 9.

Q. I call your attention to No. 78 and ask you the same question.

A. I don't think the water service was reconstructed for the thrust.

Q. If it had been, would you have known it?

A. I would.

Q. Was anything done to the water service?

A. It was replaced.

Q. What would that come under?

A. No. 9 of the specifications.

Q. What part of No. 9? A. Reassembling.

Q. I call your attention to item No. 81 and ask you the same question.

A. That is Schedule 4, is it not? That is the one that is charged in Schedule 4.

Q. By Schedule 4, you mean Schedule 4 of the libel?

A. Of the libel, yes; it either belongs to that, or else it belongs to No. 9 of the specifications; that is the one (pointing).

Q. I call your attention to item 82 and ask you the same question. [1685—1596]

(Testimony of Carl E. Klitgaard.)

A. Part of that belongs to No. 9, and part is an extra.

Q. What is the extra? A. Handholes enlarged.

Q. I call your attention to item 83 and ask you the same question.

A. That is No. 9 of the specifications.

Q. I call your attention to item 89 and ask you the same question.

A. I don't know what a "lug thrust" is.

Q. Assume that that means lengthening thrust spare L. P. Valve stem.

A. That would come under No. 2 of the specifications as compensation work.

Q. I call your attention to item 90 and ask you the same question.

A. That comes under the same heading, No. 2 of the specifications.

Q. I call your attention to No. 91 and ask you the same question.

A. If those bolts were ever made, that belongs to No. 2 of the specifications.

Q. Do you question whether they were ever made?

A. Yes, sir.

Q. What is your ground for questioning that?

A. The bolts that were in there originally were all right; the bolts that are in there now have got English thread on them.

Q. What has that got to do with it?

A. If they made new bolts, they would have put American standard thread on.

Q. Were the bolts originally English or American

(Testimony of Carl E. Klitgaard.)

standard threads?

A. They were English originally, and they are yet.

Q. Do you know what kind of threads the United Engineering Works makes for their bolts?

A. Yes, sir; standard American threads.

Q. With that comment on item No. 91, can you answer my former question?

A. It belongs to No. 2 of the specifications, compensation work.

Q. I call your attention to item No. 94 and ask you the same question. [1686—1597]

A. That belongs to No. 6 of the specifications.

Q. I call your attention to No. 96 and ask you the same question. A. That comes under No. 2.

Q. Of the original specifications?

A. Yes, sir.

Q. I call your attention to item No. 103 and ask you if you have any comment to make on that item.

A. I will tell you; that turning engine was all right when we went over there, and it was used exclusively by the United Engineering Works in overhauling the vessel; it was broken by them. I think it was broken by Nelson; this work necessitated the repairing of work that they broke.

Q. I call your attention to item 104 and ask you if that item belongs to any of the items of the original specifications.

A. It belongs to No. 9. All the dowels and set-screws were in there when she came over there.

Q. I call your attention to item 106 and ask you the same question.

(Testimony of Carl E. Klitgaard.)

A. Will you explain to me what a cofferdrain is?

Q. Assume that the word "coffer" there should be "copper."

A. Then that should come under general assembling in the original specifications.

Q. I call your attention to item 108 and ask you the same question.

A. All that reconnecting water service and drains comes under the assembling. The brass pipe in the water service should be allowed as an extra.

Q. The brass pipe in the water service should be allowed as an extra? A. Yes, sir.

Q. What was the pipe before this work was done?

A. Galvanized iron. [1687—1598]

Q. Should there be an allowance for the full value of the brass pipe?

A. No, sir; just the difference between the price of the brass pipe and the price of the iron pipe.

Q. Do you know who put that pipe up?

A. Who put it up?

Q. Yes, the brass pipe. A. I do not remember.

Q. I call your attention to item 120 and ask you if you have any comment to make on that item.

A. Yes, sir; that item there belongs to a previous contract for the thrust, the reconstruction of the thrust, that was made a year or a year and a half previous to this.

Q. Made by whom?

A. Made by Gray with Captain Matson.

Q. Do you refer to a contract which you have not mentioned in your testimony heretofore?

(Testimony of Carl E. Klitgaard.)

A. Yes, sir; this was a contract that was completed outside of this, and a trolley line that was to go overhead.

Q. I call your attention to 123A and ask you what comment you have got to make on that item.

A. I don't know anything about that item. I do not know what the circumstances are connected with it.

Q. Do you know that the work was done?

A. Yes, sir, the work was done.

Q. Does it belong to any item of the specifications?

A. It might probably belong to No. 9.

Q. But you do not know? A. I do not know.

Q. And if it did not belong to No. 9, would it be an extra? A. Yes, sir.

(An adjournment was here taken until to-morrow, Friday, November 3d, 1911, at 10 A. M.) [1688—1599]

Friday, November 3d, 1911.

CARL E. KLITGAARD, direct examination resumed:

Mr. McCLANAHAN.—Q. Mr. Klitgaard, I call your attention to item No. 125 of "Respondent Kinsman Exhibit No. 2," and ask you if you have any comment to make on that item.

A. That belongs to the general assembling under the specifications.

Q. I call your attention to item 128 of that exhibit, and ask you to what number of the original specifications that item belongs.

A. It belongs to No. 1 of the original specifications.

(Testimony of Carl E. Klitgaard.)

Q. I call your attention to item 129 of "Kinsman Exhibit" and ask you the same question.

A. That is recompense work for item No. 2 of the original specifications.

Q. I call your attention to item No. 130 of the exhibit and ask you the same question.

A. That belongs to the same item.

Q. No. 2 of the original specifications?

A. Yes, sir.

Q. I call your attention to item 131, and ask you the same question.

A. That belongs to No. 4 of the original specifications.

Q. However, under No. 4 you have testified that there was to be a credit allowance for Challenge metal, have you not? A. Yes, sir.

Q. I call your attention to items 132 and 133, and ask you the same question.

A. Those both belong to the recompense work under item No. 5 of the original specifications.

Q. And there was an allowance, as you have testified, of brass and Challenge metal as an extra, was there not? [1689—1600] A. Yes, sir.

Q. I call your attention to item 134, and ask you the same question.

A. That belongs to item No. 6 of the original specifications.

Q. I call your attention to item 135, and ask you the same question.

A. That is recompense work for item 7 of the original specifications.

(Testimony of Carl E. Klitgaard.)

Q. I call your attention to item 136, and ask you the same question.

A. That is No. 8 of the original specifications.

Q. I call your attention to item 137, and ask you the same question.

A. That is item No. 9 of the original specifications.

Q. I call your attention to items 138 and 139 of this exhibit, and ask you the same question.

A. That is item No. 10 of the original specifications.

Q. Both of those numbers? A. Yes, sir.

Q. I call your attention to item No. 140 of the exhibit, and ask you the same question.

A. That belongs to the circulating-pump contract.

Q. I call your attention to item 127 of this exhibit, and ask you if you know anything about the drawings and sketches which that item calls for.

A. No, sir, I do not know anything about them.

Q. Did you ever see them on the ship?

A. No, sir.

Q. Now, Mr. Klitgaard, I refer you to item 32 of this exhibit. Do you know that that work called for under that item was done? A. Yes, sir.

Q. What was the value of that work? Have you estimated it? A. \$14.00. [1690—1601]

Q. Mr. Klitgaard, can you state whether or no there was ever any work done in the shop of the United Engineering Works at the time the "Hilonian" was there undergoing these repairs, to any piston-rods of the ship except that done under Schedule 4 of the libel? A. That was all.

(Testimony of Carl E. Klitgaard.)

Q. The questions that I am about now to ask you, Mr. Klitgaard, all of them refer to the time the "Hilonian" was at the yards of the United Engineering Works undergoing these repairs. Do you know whether at the date of August 23d, 1909, any of the bearings of the "Hilonian" were out of the ship?

A. No, sir.

Q. You don't know, or what?

A. I know there were none out of the ship. Any of the main bearings, did you say? Read the question to the witness, Mr. Reporter.

(The Reporter reads the question.)

A. No, sir, there were none out of the ship.

Q. Do you know whether there was any work performed by the United Engineering Works on tube-heads other than that performed under Schedule 10 of the libel? A. That is all.

Q. Do you know whether there was any work done on the brake of the "Hilonian" other than that performed under Schedule 7 of the libel?

A. No, sir, no other work except that.

Q. Do you know whether there was any lagging work done on any cylinder in the shop of the United Engineering Works except that done on the small balance-cylinder, which was the compensation work as you have testified for No. 2 of the original specifications?

A. No, sir, that was the only lagging done to cylinders in the shop.

Q. Do you know whether the "Hilonian's" reverse-shaft was ever in the shop of the United En-

(Testimony of Carl E. Klitgaard.)

gineerings Works? [1691—1602]

A. I know it never was.

Q. Do you know whether any valves for feed-pumps were ever furnished to the “Hilonian” by the United?

A. No, sir, I don’t know that any were furnished.

Q. What do you mean by that—that they might have been furnished and you not know it?

A. No, sir, they could not have been. I meant to say that I know they were none furnished.

Q. Do you know whether any work was ever done on a cylinder-head belonging to the machinery of the “Hilonian” except that done on the small balance-cylinder referred to?

A. No, sir, there was no work done on the cylinder-heads in the shop except the one referred to.

Q. Do you know whether any of the “Hilonian’s” bed-plates were ever in the shop of the United?

A. I know they were not there.

Q. Do you know whether any of the “Hilonian’s” bed-plates for engine was ever in the shop of the United? A. I know it was not.

Q. Do you know whether any work was ever done in the shop on the “Hilonian’s” air-chambers?

A. There was no work done on the “Hilonian’s” air-chamber in the shop, for the “Hilonian.” They were thrown into the scrap as far as I remember.

Q. That answer requires a further explanation; will you make it? What do you mean by “thrown into the scrap”?

A. I mean the only air-chamber that was taken

(Testimony of Carl E. Klitgaard.)

from the ship was permanently discarded.

Q. Permanently discarded by whom?

A. By the ship. They had no further use for them.

Q. Do you know whether those air-chambers were ever brought [1692—1603] back on to the ship again? A. I know they were not brought back.

Q. On an exhibit in this case called "Adamson Exhibit 7," under date of September 21st, and under No. 5398, there is a charge for "extension and brass-tags for main and bilge injections." Can you state what that work belongs to, referring to the specifications and the contracts which you have mentioned?

A. Why, that belongs to the circulating-pump contract.

Q. Do you know what any work of babbitting thrust-collars would belong to? A. Schedule 4.

Q. Of the libel? A. Of the libel.

Q. Do you know what any work of "babbitting thrust-collars" would belong to? A. Schedule 4.

Q. Of the libel? A. Of the libel.

Q. Do you know what any work on the thrust-collars would belong to?

A. With the exception of the babbitting?

Q. Don't except the babbitting, any work on the thrust-collars would belong to.

A. It would belong to Schedule 4 of the libel, or No. 9 of the original specifications.

Q. Do you know whether any work was ever done by the United Engineering Works on any oil-pump of the "Hilonian" in the shop?

(Testimony of Carl E. Klitgaard.)

A. There was no work done on the oil-pump.

Q. Do you know whether any work was ever done in the fly-wheel in the shop of the United Engineering Works except under the circulating-pump contract?

A. No, sir; that is, all the work done to the fly-wheel belonged to the circulating-pump contract.

Q. Do you know whether any cylinder liner work was ever done by the United Engineering Works on this job? A. No, sir. [1693—1604]

Q. It was not?

A. No, sir; there was none done.

Q. Is there such a thing in the ship as an air-cylinder, Mr. Klitgaard?

A. No, sir; the "Hilonian" has no air-cylinders.

Q. Do you know whether anything was ever done by the United to the cover for the slide-valve?

A. Not in the shop.

Q. That is, no work was done on that in the shop?

A. No, sir.

Q. Where would work done on polishing fly-wheels circulating-engine belong to?

A. The circulating-pump contract.

Q. Do you know whether any shop work on the main bearing or main bearings was ever required under the original specifications? A. No, sir.

Q. Do you know what work on the main bearings of the "Hilonian" would come under—what schedule of the libel? A. Schedule 8 of the libel.

Q. Do you know whether work on the main bearings would come under any other schedule than Schedule 8?

(Testimony of Carl E. Klitgaard.)

A. No. 9 of the original specifications.

Q. Would that be shop or ship work?

A. That would be ship work, no shop work.

Q. Do you know whether any shop work was done on the spring bearings except that done under the original specifications?

A. Yes, sir; there was some work done.

Q. What was it?

A. It is covered in Schedule 4 of the libel.

Q. Shop work? A. Shop work; yes.

Q. My question was, was any shop work done on the spring bearings under the original specifications?

A. No, sir.

Q. Do you know whether any columns of the "Hilonian" were ever in the shop of the United?

A. I know there were never any up there.

Q. Do you know whether any condenser from the "Hilonian" was [1694—1605] ever taken to the shop of the United?

A. The condensers were never moved out of the ship.

Q. Do you know whether any of the ship's taps were ever tempered in the shop of the United?

A. I know that there were none tempered.

Q. Do you know whether any swivel work was called for under the original specifications?

A. No, sir; not called for.

Q. Do you know what schedule of the libel "work on details for break" would come under?

A. Schedule 7.

Q. Do you know what schedule of the libel "work

(Testimony of Carl E. Klitgaard.)

on alteration on bearing for main bearing" would come under? A. Schedule 8.

Q. Do you know whether anything that could be called trolley-rails were ever taken from the ship?

A. No, sir; there were none removed from the vessel.

Q. Do you know under what work would come "nozzle for C. I. R. pump"?

A. The circulating-pump contract.

Q. Do you know when the "Hilonian," Mr. Klitgaard, went on the marine railway of the United Engineering Works? A. September 10th, 1909.

Q. Could any work have been performed on the wheel of the "Hilonian" by machinists prior to the ship going on the marine railway. A. No, sir.

Q. Could any work have been performed on the sea-valves of the "Hilonian" prior to the ship going on the marine railway?

A. Yes, sir; it could have been, but there was not.

Q. Mr. Klitgaard, would it have been possible to have done work on the sea-valves of the "Hilonian," or on her wheel for 10 hours straight time on the 10th of September, 1909?

A. No, sir. She did not go on the dock until one o'clock in the afternoon. [1695—1606]

Q. Prior to the vessel going on the dock on the 10th of September, had you any knowledge of any repair work required to the rudder of the "Hilonian"?

A. No, sir.

Q. Was any repair work found necessary after she went on the dock? A. Yes, sir.

(Testimony of Carl E. Klitgaard.)

Q. What was it?

A. The renewals of the gudgeons and pintles. We found them very badly worn.

Q. When was that repair work first discovered?

A. Shortly after the vessel was out of the water.

Q. What was done with reference to the matter?

A. We gave orders to have the gudgeons and pintles renewed.

Q. By "we," who do you mean?

A. Captain Saunders and myself, and Mr. Putzar.

Q. Who did you give orders to?

A. Directly to Mr. Williamson. I think he was the first man who was instructed on it. Later Mr. Christy was brought down in consultation.

Q. When was Mr. Williamson so instructed?

A. A couple of hours after she came on the dock.

Q. Do you remember when Mr. Christy was spoken to about the matter?

A. No, sir; I think it was the following morning.

Q. Do you know when work was commenced by the United on the gudgeons and pintles?

A. The gudgeon and pintle work was commenced right away the next morning. The rudder was lifted the first thing the following morning.

Q. Did you discover the need for these repairs before the rudder was lifted? A. Yes, sir.

Q. Do you know whether that work was continuously performed after it was commenced on the morning of September 11th?

A. Yes, sir; they worked at it right along.

Q. Mr. Klitgaard, do you know how that work

(Testimony of Carl E. Klitgaard.)

was performed; [1696—1607] how the boring was done, for instance?

A. I don't just recollect the details of it.

Q. You do not know the tools they used?

A. No, sir.

Q. Do you know whether there would have been any difficulty in keeping track of the time and labor and material done under the minor contracts that you have testified to as distinguished from the original specifications?

A. No, sir; there should not be any difficulty.

Q. Would there be any difficulty in so keeping track of the time, labor and material done on the extra work that was performed by the United Engineering Works as distinguished from both the original specifications and the minor contracts?

A. No, sir.

Q. Would there have been any difficulty in keeping track of the time and labor and material done on the circulating-pump contract as distinguished from the original specifications? A. No, sir.

Q. The minor contracts or the extra work?

A. No, sir.

Q. With reference to the Howden forced draught work, would there have been any difficulty in keeping track of that as distinguished from the others?

A. No, sir.

Q. Or the donkey-boiler work? A. No, sir.

Q. When the "Hilonian" first went to the yards of the United Engineering Works were you familiar with the condition of her machinery? A. Yes, sir.

(Testimony of Carl E. Klitgaard.)

Q. What was the condition of the "Hilonian's" machinery at that time?

A. Her machinery was pretty good; in pretty good shape.

Q. Do you know whether the condition was such that immediate repair was required or not?

A. No, sir; she could have gone six months more without any trouble. [1697—1608]

Q. With reference to the circulating-pump work, the donkey-boiler work, and the Howden forced draught system work which you have testified to as having been done under contracts, was any work done on either of those pieces except that called for by the contract? A. Yes, sir.

Q. What was it?

A. Two low water-cocks installed in the donkey-boiler.

Q. That you would consider an extra?

A. Yes, sir.

Q. Is that all that was done except under the contracts? A. Yes, sir; I think that is all.

Q. Mr. Klitgaard, after the completion of this work, I understand you severed your connection with the Matson Navigation Company? A. Yes, sir.

Q. Did you make a report of the repairs that were done to the "Hilonian" at that time to the Matson Navigation Company? A. Yes, sir.

Q. Did you make that in writing? A. Yes, sir.

Q. Did you give any copy of that report to anyone else? A. I gave one to Harry Gray.

Q. Who is Harry Gray?

(Testimony of Carl E. Klitgaard.)

A. Secretary of the United Engineering Works.

Q. When did you give him this copy?

A. Shortly after I had handed mine to the Matson Company.

Q. And when did you hand yours to the Matson Navigation Company?

A. Three or four days after the ship sailed.

Q. And when did the ship sail?

A. She sailed on the 25th of September, 1909.

Mr. McCLANAHAN.—Mr. Frank, I again suggest to you that if you will produce that copy, I will be glad to offer it in evidence. [1698—1609]

Mr. FRANK.—It will be produced in time.

Mr. McCLANAHAN.—Q. Mr. Klitgaard, calling your attention to the work shown by the first three pages of Schedule 1 of the libel, and the work shown by the first page of Schedule 3 of the libel, and the work shown by Schedules 4, 5, 6, 7, 8, 9 and 10 of the libel I will ask you if you have ever estimated the reasonable value of that work as of the date that it was performed in the year 1909. A. Yes, sir.

Q. What was the estimate? A. \$23,156.

Q. In making that estimate, how did you treat Schedules 4, 5, 6, 7, 8, 9 and 10?

A. I took the prices agreed on in these schedules and contracts when they were made, and added them to what I found the other work to be worth.

Q. And the sum total you say was \$23,156?

A. Yes, sir.

Q. In order to make this perfectly clear, I understand in your estimate of \$23,156, there is to be found

(Testimony of Carl E. Klitgaard.)

\$616.80, as the value of Schedule 4? A. No, sir.

Q. What is that?

A. This second item referring to the planing of the horseshoes, etc., I only allowed as agreed for the metal that went into those horseshoes.

Q. How much was that? A. 300 lbs.

Q. With that qualification you took the estimate found on Schedule 4 for the other items of work there? A. Yes, sir.

Q. And for Schedule 5, you took the value there of \$190? A. Yes, sir.

Q. And for Schedule 6, you took the value there of \$140? A. Yes, sir.

Q. And for Schedule 7 you took the value there of \$140? A. Yes, sir.

Q. And for Schedule 8 you took the value there of \$1,350? A. Yes, sir. [1699—1610]

Q. And for Schedule 9, what did you do?

A. I took it as it stands there, \$1,140.

Q. And for Schedule 10, you took the value there of \$725? A. Yes, sir.

Q. In estimating this work, Mr. Klitgaard, were you or were you not familiar with it as it had been done? A. Yes, sir, perfectly.

Mr. McCLANAHAN.—You can cross-examine.

Cross-examination.

Mr. FRANK.—Q. Of course, in making those estimates, Mr. Klitgaard, you estimated the work on the basis that you have just given your testimony?

A. Yes, sir.

Q. And the several things that you have testified

(Testimony of Carl E. Klitgaard.)

to as having been done, and not having been done, and in every detail as you have given your testimony here, that is the foundation of your estimate?

A. My estimate was made from a copy of Schedule 1 of the libel and the attached schedules.

Q. The estimate was made from a copy of Schedule 1 of the libel?

Mr. McCLANAHAN.—And the attached schedules?

A. Yes, sir.

Mr. FRANK.—Q. You have testified that in many respects Schedule 1 of the libel does not state the true condition of the work?

A. I was requested by Messrs. McClanahan and Derby to figure on the work as set forth on those specifications in that bill, and I did so.

Q. When did you make that estimate, Mr. Klitgaard? A. Last June.

Q. June, 1910? A. Yes, sir.

Q. Where at?

A. West Berkeley. [1700—1611]

Q. At West Berkeley? A. Yes, sir.

Q. That was after you severed your connection with the vessel? A. Yes, sir.

Q. Did you consult with anybody at all when you made that estimate? A. No, sir.

Q. Did not talk with anybody about the details of it?

A. Not except I might have discussed the matter with Mr. Gray. I don't recollect doing so.

Q. With whom? A. Mr. Gray.

(Testimony of Carl E. Klitgaard.)

Q. By "Mr. Gray" do you mean Mr. Harry Gray?

A. Mr. Harry Gray.

Q. At the time you were making the estimate, did you tell Mr. Gray you were making such an estimate?

A. No, sir; I told him afterwards that I had made an estimate.

Q. What sort of discussion did you have with Mr. Harry Gray respecting the estimate that you are now testifying to?

A. I did not have a discussion with him regarding the estimate. I probably discussed the work with him.

Q. You probably discussed the work with him?

A. Yes, sir.

Q. What do you mean by "probably"?

A. I may or may not. I do not recollect having done so.

Q. If you may or may not, why have you volunteered the statement just now, that you did?

A. I did not intend to make a positive statement, Mr. Frank. In those days, I saw a good deal of Mr. Gray. We discussed matters of all kinds.

Q. If you have doubts about it now, and you may or may not, what moved you to make the suggestion, when first asked if you discussed it with Mr. Gray?

A. Because he is the only man that I probably would discuss it with. [1701—1612]

Q. Because he is the only man you probably would discuss it with? A. Yes, sir.

Q. How would you come to discuss it with him?

A. Merely because he was the man who was after

(Testimony of Carl E. Klitgaard.)

myself most interested in the work.

Q. And you want us to understand that if you did discuss it with him, you did not give any intimation of the purpose of the discussion?

A. No, sir; I don't think I did.

Q. You have not any idea where you discussed it with him? A. No, sir.

Q. And you have not any idea when you discussed it with him? A. No, sir.

Q. As a matter of fact, you never did discuss it with him? A. I tell you I may or may not.

Q. You do not want to be understood as testifying that you ever did discuss it with Mr. Gray?

A. I do not want to make a positive statement on the matter; no.

Q. Outside of your possible discussion with Mr. Gray, you want us to understand that you never spoke about the subject to anybody, is that right?

A. Yes, sir; that is right.

Q. Did you ever speak to Mr. Diericx about it?

A. No, sir.

Q. How did you come to make the estimate if you never spoke to Mr. Diericx about it?

A. I got a letter from Mr. McClanahan.

Q. When you got that letter did you not come over to see about it?

A. I had already been asked whether I would estimate it or not.

Q. Where is that letter now?

A. I think I have it with me (producing).

(Testimony of Carl E. Klitgaard.)

Q. Did you call on Messrs. McClanahan and Derby respecting this matter when you got this letter?

A. I don't remember whether I did or not, Mr. Frank.

Q. You do not remember whether you did or not?

A. No, sir.

Q. Have you not any recollection on the subject at all?

A. Not as to whether I called on him after receiving the letter or not; no.

Q. Did you talk with him before you received the letter?

A. I had been asked whether I would estimate it.

Q. What was said to you?

A. I was asked whether I would estimate the bill.

Q. What was your reply?

A. I demurred to about estimating it at first owing to my friendship for Mr. Harry Gray.

Q. You seem to count a great deal on your friendship for Mr. Harry Gray in this examination. You have volunteered that once before.

A. That was the reason I did not care to enter into the matter here, but it was put up to me as being my duty to the Matson Navigation Company. I consequently agreed to estimate the bill.

Q. When you estimated the bill, did you have before these specifications in this case?

A. I had this before, Mr. Frank. (The witness hands to the counsel a paper.)

Q. Those are the specifications that Mr. McClan-

(Testimony of Carl E. Klitgaard.)

ahan just passed to you? A. Yes, sir.

Q. And that is what you mean by specifications, that is all the papers before you?

A. Yes, sir, and my notes.

Q. And your notes? A. Yes, sir.

Q. Have you the details of that estimate?

[1703—1614]

A. What do you mean by the details?

Q. That you made at that time?

A. I sent my estimate to Mr. McClanahan.

Q. Where are the details from which the estimate is given?

A. Most of them are destroyed I think, Mr. Frank.

Q. You have destroyed them? A. I think so.

Q. What you said to Mr. McClanahan was just simply the conclusion?

A. Yes, sir, my findings.

Q. Why did you destroy the details?

A. Because I did not think there was any necessity for keeping them.

Q. What did you allow, Mr. Klitgaard, for renewing No. 4 tank-tops on port side and securing fore and aft and thwartship angle-irons under the same?

A. Do you mean how much did I allow?

Q. Yes, how much did you allow?

A. I cannot state positively now how much it was.

Q. Have you any means of determining now how much it was? A. No, sir, not correctly.

Q. Not correctly? A. No, sir.

Q. Just take a sheet of paper and see how near

(Testimony of Carl E. Klitgaard.)

you can come to it now, Mr. Klitgaard. (Handing a sheet of paper to the witness.)

A. Well, I could not attempt that now.

Q. Oh, yes, you could.

A. I have not now in my recollection the number of angle-irons or the number of rivets, or the number of plates that were driven into that tank.

Q. You have not?

Q. Without the weight of the various materials, it would be almost impossible to give anywhere near a true figure of what that work was worth.

Q. Did you make that figure entirely from recollection at that [1704—1615] time?

A. I had various notes and various note-books appertaining to the work.

Q. You recognize the fact, Mr. Klitgaard, that during your direct examination you have testified regarding every detail that was asked you, promptly off the bat, as quick as the question was asked, without reference to any notes of any kind, with the exception of one or two weights of babbitt metal that you looked to your note-book for; is that not the fact? A. With the help of the specifications.

Q. With the help of the specifications that have been before you? A. Yes, sir.

Q. And every question that you have been asked you answered promptly, without any stopping to consider at all?

Mr. McCLANAHAN.—I object to that statement as a misstatement of the situation. It is an attempt of counsel to paint a picture for the Court. It is not

(Testimony of Carl E. Klitgaard.)

fair, because Mr. Klitgaard did not do as Mr. Frank has said promptly answer every question.

Mr. FRANK.—Are you instructing the witness?

Mr. McCLANAHAN.—I am making my objection to your statement.

Mr. FRANK.—It is not your statement. The witness can answer it. He knows as much about it as you do. The witness now he has got his instructions can make such statement as he thinks is true or as he desires. Just answer the question.

A. I say the same as Mr. McClanahan, that I certainly hesitated at times.

Q. You never consulted anything?

A. Except the papers before me.

Q. Except the specifications. When you say you hesitated, you did not hesitate very long, did you?

[1705—1616]

A. Not very often; no.

Q. Now, if you have such good recollection of the matter for the purpose of that examination which went into every detail, why is it you have not sufficient recollection of the detail to give me some of the figures that I have not asked you for?

A. I will tell you, Mr. Frank, where I might easily remember what has been done, I would not remember just how many rivets or how many angle-irons, or how many strengthening bars or how many plates, the sizes of those plates or the weight of those plates; those are details that I could not possibly recollect.

Q. And there is no means of getting them at the present time? A. Not that I know of.

(Testimony of Carl E. Klitgaard.)

Q. It is only because you had a recollection at that time of all of those small details that you were enabled to make a figure; is that right?

A. I think I made the statement that I had my notes—various notes.

Q. Where are the notes?

A. I also told you that most of them were destroyed.

Q. Most of them were destroyed? A. Yes, sir.

Q. It is only because you had those before you in the notes at that time that you were able to make any estimate at all; is that right?

A. Yes, sir. I made the estimate with the help of my notes.

Q. And without that, it would be impossible to duplicate the estimate, I understand you to say; is that right?

A. It is impossible for me to do it now; yes.

Q. Let us not misunderstand each other. You mean it is impossible for you to do it now or will be impossible for you to do it at any time hereafter?

A. No, sir. [1706—1617]

Q. When can you do it again?

A. If I was given the opportunity to remeasure those plates and see that work in detail I could give that estimate.

Q. If you had the opportunity to remeasure the work? A. Yes, sir.

Q. Has the steamer gone out? A. I think so.

Q. So it is beyond your power, then, at the present time, to get any data whatsoever to duplicate that estimate?

(Testimony of Carl E. Klitgaard.)

A. I do not know of any way.

Q. You do not know of any way whatsoever?

A. Of getting the data.

Q. Did you, as the work was being performed, keep a tab of the number of rivets, the size of the angle-irons and the details that you have spoken of?

A. Not in just the way you have put it in.

Q. In what way did you?

A. I did not count every rivet, but I got from the foreman, Mr. Hurley, or Mr. Taylor, whichever it was, a note or memorandum as to how much material had been used.

Q. A note or memorandum as to how much material had been used? A. Yes, sir.

Q. When did you get that from Mr. Hurley or Mr. Taylor?

A. I don't know. I asked them how much material was used in that.

Q. When? A. When the work was completed.

Q. When the work was completed?

A. Yes, sir.

Q. How long after the work was completed?

A. I don't know.

Q. You do not know? A. No, sir.

Q. Cannot you give us any idea?

A. No, sir. You must remember [1707—1618] that the note he gave me or the memorandum I got from him was more or less approximated.

Q. Are you sure that you got a memorandum from Mr. Hurley or Mr. Taylor?

A. Not a written one, probably.

(Testimony of Carl E. Klitgaard.)

Q. Not a written one? A. No, sir.

Q. What kind of one did you get?

A. For instance, I asked them how much material had gone into that, or what had been done to that tank, and they informed me, and I myself had seen the number of angle-irons and cross-bars and strengthening-bars that had gone into this.

Q. When did you ask them this and get the information? A. About every day I asked them.

Q. During the time the work was going on?

A. Yes, sir.

Q. And what did you do with the information that you received? A. Jotted it down in my notes.

Q. And is that some of the notes that you have destroyed? A. Yes, sir.

Q. You do remember when you asked these men for that detail?

A. I don't remember the exact date.

Q. You mean to say it was during the progress of the work?

A. And when the work was completed I asked them.

Q. You remember the exact dates of a great many things that have been asked you on direct examination. I shall expect you to remember some dates now on the cross-examination, Mr. Klitgaard.

A. I cannot do any more than remember what I can remember, Mr. Frank.

Q. I see. Then you only kept track of that work yourself in a general way? A. Yes, sir.

Q. You did not keep a detailed track of it while

(Testimony of Carl E. Klitgaard.)

it was being performed?

A. No, sir, just a general track. [1708—1619]

Q. Now, with the next item "Cut three holes in bottom of ship to facilitate the cleaning of No. 4 tank." Can you give us any idea of how you figured that?

A. I will tell you, it was a very small job, and at the time when I made the estimate I had in mind fairly clearly about the length of time that it took to do that job.

Q. To do that particular job? A. Yes, sir.

Q. How did you have it in mind?

A. Because the vessel was on the dock and there was some discussion brought up as regards whether we would cut that size hole or not, or whether we would just run a plug-hole, a small inch and a half hole and steam the tank out, which we tried, but owing to the thickness of the fuel sediment that was on the bottom of the tank we found it did not come out fast enough so we cut this 3 or 4 inch hole in the bottom of the ship.

Q. Now that you have related it, have you not just as good a recollection of it now as you had then?

A. Well, no, I cannot say that I have.

Q. You have not?

A. I can remember the instance very well.

Q. Was there much delay due to the discussion over cutting that hole?

A. No, sir; we started to cut holes right away as soon as she came on the dock.

Q. You say there was some discussion about the

(Testimony of Carl E. Klitgaard.)

manner in which you should do it?

A. There was a discussion as to the size of the hole, whether we should cut an inch and a half hole for a plug or cut up this larger hole.

Q. How long did you discuss it?

A. We cut the smaller hole first; when we found it did not work we cut the larger hole. The whole business was probably [1709—1620] done inside of 3 or 4 hours.

Q. You say probably done inside of 3 or 4 hours. Have you any recollection of whether it was 3 or 4 hours now?

A. I have a fairly good recollection that it was done in the forenoon.

Q. A fairly good recollection?

A. Yes, sir. I would not swear to it.

Q. You would not swear to it?

A. Within any certain number of hours.

Q. You would not swear to how many men worked on it either, would you? A. No, sir, I would not.

Q. Can you give us now any figure on 3 "Patches riveted over holes. 2-2½" sounding pipes supplied and fitted in #3 and #4 tanks"?

A. No, sir. I would not care to give a figure on it now.

Q. Why could you not give a figure on it now?

A. Because it is two years since that work was done. I could not fairly make figures now from memory, though I remember these instances quite well. I don't remember just how many men worked, or how long they worked on those jobs.

(Testimony of Carl E. Klitgaard.)

Q. As a matter of fact, Mr. Klitgaard, with reference to all of this work you were just giving it a sort of general supervision, were you not?

A. During the progress of the work, do you mean?

Q. Yes.

A. Yes, sir, I was superintending the work.

Q. Giving it a general supervision?

A. Yes, sir.

Q. Seeing that the work was performed in the manner in which you desired it performed?

A. Yes, sir.

Q. That was the extent of your work upon it?

A. Yes, sir, that was about the extent of it. [1710

—1621]

Q. That was all you were doing in respect to it?

A. Yes, sir.

Q. And Mr. Putzar was keeping the time?

A. Yes, sir.

Q. You had nothing to do with the time at all?

A. Not officially; no.

Q. Well, unofficially either?

A. No, sir, merely to the extent that I would notice probably how long a man was on a certain job.

Q. But it was no part of your business, and outside of your noticing it, you paid no further attention to it? A. No, sir.

Q. Could you give us any figure or any estimate now on No. 4: "Secured angle-iron bars in shaft-alley for new flooring support"?

A. If you could give me the size and weight of that angle-iron I could give you a figure on it.

(Testimony of Carl E. Klitgaard.)

Q. You cannot do it now unless you know just those details?

A. I could not recollect now, Mr. Frank.

Q. Those angle-iron bars are underneath the flooring, are they not? A. Yes, sir.

Q. Could you give us any idea or any figure upon No. 5: "Supplied and fitted 4 new sheet-iron guards for shaft alley couplings"?

A. I cannot give you a figure except what is based on my memory as to the extent of that work.

Q. That is all? A. Yes, sir.

Q. Then all of your estimate that you made was simply based at that time upon your then recollection of the extent of the work; is that it?

A. Assisted by my notes.

Q. Your notes had nothing in them except showing the extent of the work; is that right?

A. That is it.

Q. That is all your notes consisted of?

A. I had various weights in it and sizes and materials.

Q. And that is all?

A. That is all. [1711—1622]

Mr. FRANK.—I am going to offer this letter of Mr. McClanahan's with the specification attached, which the witness has testified to as an exhibit, and I ask that that paper be marked "Libelant's Klitgaard Exhibit No. 1.")

(The document is marked "Libelant's Klitgaard Exhibit No. 1.")

Q. Now, I was not able to follow you on your direct

(Testimony of Carl E. Klitgaard.)

examination as closely as I should like with respect to those figures, Mr. Klitgaard, and I wish you would take a piece of paper and put down the figures which you say you allowed as contract work.

A. Just put down the figures?

Q. Just make a memorandum there what they are for, so that we can follow it.

Mr. McCLANAHAN.—Mr. Frank, that will take a long time, to copy those pages over again and put down the figures. Why not let him put the figures down?

Mr. FRANK.—No. I can't help it. You have taken a long time, all the time you have found necessary for your examination.

Mr. McCLANAHAN.—I do not think you ought to kill time that way.

Mr. FRANK.—I am not trying to kill time. I am trying the best I can.

Q. Add that up. A. I think it is all there.

Q. I notice you have left out \$146.88, out of Exhibit 4; is that right?

A. That is down a little further, Mr. Frank. I gave them \$4 more.

Q. Now, in making this estimate, do I understand you that you took each one of these items as shown on the schedule or as reproduced in "Respondent Kinsman Exhibit No. 2," and figure upon each of those items as they run down?

A. I itemized them myself, Mr. Frank, and figured them. [1712—1623]

Q. You itemized them. How do you mean?

(Testimony of Carl E. Klitgaard.)

A. Well, I made a pencil list something like Mr. Kinsman's exhibit.

Q. You made a pencil list like Kinsman's exhibit?

A. Something like it.

Q. Are these pencil memoranda on the side of this specification what you mean, your pencil list?

A. No, sir.

Q. Those are not yours? A. Those are mine.

Q. Those are yours? A. Yes.

Q. Is that the way that you took them?

A. These lines are merely meant for checking off on my note-book.

Q. That is the line—

A. Where I made a little pencil mark.

Q. On the right-hand side? A. On both sides.

Q. You say "Checking off your note-book." You mean what?

A. I mean that these items I checked them in my note-book to see that they all corresponded with what I have in my note-book.

Q. That is the same items? A. The same items.

Q. Is that the only use you made of your note-book? A. What?

Q. In connection with these?

A. No. After I had itemized this list to suit myself I referred to my note-book to refresh my memory.

Q. Well, is that the itemization indicated on here? I notice there are brackets down here as well as figures.

A. Those brackets is where they are slurred to-

(Testimony of Carl E. Klitgaard.)

gether, where I have got them as belonging to one in my note-book, for some reason or another.

Q. And the other check marks are single items; is that how you treated it?

A. I would like to look that over, Mr. Frank.

Q. Well, look it over. I want to find out how you worked it. A. I think that is the idea.

Q. That is the idea? A. Yes, sir.

Q. Now, I find some figures alongside of this also; what do those [1713—1624] figures mean?

A. Well, here is one that means the size of a pump.

Mr. McCLANAHAN.—Q. You are referring now to what?

A. To “Made two brass links and one crosshead for sanitary pump.”

Q. The size of that pump is what?

A. 6 by 4 by 6. This query marked here is because of this item, “turned down thrust shaft coupling, and faced off.” I made a query mark there because the shaft was not turned down.

Mr. FRANK.—Q. Are you sure it was not turned down?

A. The shaft coupling was not. It was faced off. These figures here probably refer to notations I have in my note-book as to the approximate cost of these various things.

Q. What are you pointing to?

A. For instance, here—

Q. What is it? A. The figure “30”—

Q. On the second page.

A. On the second page, yes. It is opposite “made

(Testimony of Carl E. Klitgaard.)

and fitted Norway ironholding down bolts for spring bearing and thrust-box." This figure 28—

Mr. McCLANAHAN.—Q. Identify it as just below the "30."

A. Just below the 30, opposite also the item reading "H. P. and I. P. Removed for examination, cleaned, oiled and replaced," also probably refers to the approximate time of the work on that job. This query mark opposite, on the third page, "made and fitted strap for hanging spare horseshoe and 2 adjusting nut wrenches," that was put there because that item belongs to a previous contract which we entered into for the reconstruction of the thrust.

Mr. FRANK.—Q. You have been all over that, Mr. Klitgaard, in your direct examination.

Mr. McCLANAHAN.—He is answering your question. [1714—1625]

Mr. FRANK.—Q. You have been all over that in your direct examination and so you need not repeat the whole detail; when you come to that give us the query mark and say "as I have already testified."

A. I thought you wanted me to tell you all those things.

Q. I want to know what they are for.

A. Well, I can't tell you what they are for, unless I read it.

Q. Let us not waste time talking about it.

A. Here is a query mark here.

Q. Yes. Now, what is No. 3 opposite the bracket on the third page—the big bracket?

A. Well, that must refer to the details of that item.

(Testimony of Carl E. Klitgaard.)

Q. You don't know what it means now?

A. I can probably explain it if you will let me read the item, but I can't without.

Q. Read it, then.

A. That is what I am trying to do. I have read all those.

Q. Well, what is that?

A. That is a figure which refers to the contents inside of that bracket, Mr. Frank.

Q. Referring to the number of joints?

A. No, it does not refer to the number of joints.

Q. Well, what does it refer to?

A. It refers to the whole business, as a whole.

Q. What does it mean?

A. Probably refers to something in my note-book, as to that item which is enclosed in that.

Q. You don't recall now what it means?

A. May I see the specification? Here it is. No, I don't know what it means at this time.

Q. What does the "S" mean below it—well, the "S" is on the other side.

A. It probably means that those items within the brackets are covered by the specification. [1715—1626]

Q. Well, did you make a distinction then in your estimate between items covered by the specifications and items that were not covered by the specifications?

A. No; but you see I had several note-books, and the items covered by the specifications were all in one note-book, or practically all in one note-book, and I

(Testimony of Carl E. Klitgaard.)

bracketed these out so that I would know what notebook to refer to in making my estimate.

Q. Are Taylor and Burley the only ones you applied to for the amount of material that was going into the ship?

A. I think so. They were the ones directly connected with it, in charge of that work.

Q. Well, I am speaking generally of all the work that was performed on the ship at this time.

A. Why, no.

Q. Who else did you ask?

A. Oh, probably asked Siversen and Nelson.

Q. You say you probably asked Siversen and Nelson. Have you any recollection of asking Siversen?

A. I have no distinct recollection; no.

Q. Well, is that in the same category with your testimony regarding your conversation with Mr. Gray, which you do not wish to affirm or deny?

A. I do not want to go on record as making a positive statement that I asked him.

Q. That you asked him. But you are not sure about that? A. No.

Q. Anybody else that you might possibly have asked?

A. I might have possibly asked Roberts, the storekeeper.

Q. You don't know whether you did or not?

A. No, sir.

Q. Anybody else?

A. Well, on some jobs I have asked Williamson, yes.

(Testimony of Carl E. Klitgaard.)

Q. On some jobs? What jobs did you ask Williamson on? [1716—1627]

A. Oh, the compensation work for the low pressure, the amount of bronze that went into the eccentric straps.

Q. Anything else?

A. The amount of white metal.

Q. What?

A. The amount of challenge metal.

Q. The amount of challenge metal? Anything else?

A. Yes; I must have asked him for the amount of challenge metal that went into the horseshoes.

Q. Anything else?

A. Also as regards the amount of white metal that went into the shoes.

Q. Anything else?

A. I probably got from him the information as regards how much bronze was in the patch, compensation work for No. 7 of the specification.

Q. Well, are you sure about that?

A. Sure about what?

Q. That you got that from him? You say "probably" again.

A. Well, I can't positively state that I got it from him. I weighed that patch myself.

Q. You weighed the patch yourself?

A. Yes, sir.

Q. Where did you weigh the patch?

A. I weighed it up in the shop when it came in.

Q. In what shop?

(Testimony of Carl E. Klitgaard.)

A. The United Engineering Works.

Q. Well, what shop do you refer to, the machine-shop or—

A. The machine-shop where they weigh the castings.

Q. The machine-shop; that is the only thing you weighed, was it?

A. As far as I can recollect, it is the only thing.

Q. And that is all the information you have in your note-book what you have just been testifying to, that you asked somebody or probably asked somebody?

A. Yes, sir, except where I saw it myself.
[1717—1628]

Q. Well, what do you mean, except where you saw it yourself?

A. Well, I would not ask them—if I saw the material go on the ship I would not ask anybody else about it.

Q. But you were not paying close enough attention about people to see it go on the ship so you went around to these different foremen and asked them about the amount of material, and then occasionally you saw it yourself; is that right?

A. That is right.

Q. Of course, you were on the ship at night-time, but by that you do not mean to be understood you were around the ship all the time during the night?

A. As a general rule, I was up till about midnight.

Q. Up till about midnight and then went to bed?

A. And then went to bed.

Q. Three or four nights you were gone altogether?

(Testimony of Carl E. Klitgaard.)

A. Three or four nights I was over here; yes.

Q. Of course, during this time Mr. Kinsman had charge of the engineer crew that was at work on the boilers; is that right? A. During what time?

Q. During the time of the repairs on the "Hilonian"?

A. He had charge of the engineer's crew at that time.

Q. That were working on the boilers?

A. Auxiliaries.

Q. On the auxiliaries? A. Auxiliaries.

Q. And the boilers? A. Yes, sir.

Q. Now, what detail did you have, Mr. Klitgaard, to supplement No. 10 for your figures, "straightened and patched bulkhead on port side of L. P. valve motion and division plate in filter tank"?

A. I probably only had my knowledge of how long it took to do that work.

Q. That is all that you had? A. I think so.

Q. When the floor plates over the shaft were raised, were they [1718—1629] replaced, the same floor plates? A. No, sir.

Q. What was done?

A. There was no floor plates there, in the first place; there was a grating over there; we put a floor plate on.

Q. You put a floor plate on? A. Yes.

Q. What detail did you have for that?

A. I knew at that time how much angle-iron it was and how much labor it was to put the angle-iron on.

Q. You got that knowledge, I suppose, as you did

(Testimony of Carl E. Klitgaard.)

the rest, by asking Mr. Hurley?

A. No; I probably saw that myself.

Q. You probably saw it yourself?

A. Undoubtedly I did. I saw the work while it was being done.

Q. You made a report, you say, of this work?

A. Yes.

Q. Did you make a detail of everything that you had on the work at that time?

A. That report was made from my notes, and I think specified all the work that was done on the vessel.

Q. And gave it in full detail as it appeared in your notes?

A. Pretty near so, I think. My notes may have contained more details than the report did.

Q. May have. Are you—

A. I know that they did.

Q. In what respect?

A. Well, my notes opposite each of these items that went into the report would,—some of them contained the amount of material that had been put into that, for my own personal benefit.

Q. Only some of them?

A. Yes; not all of them.

Q. What particular things were there in there that you considered for your benefit to keep the amount of material for, in your note-book?

A. I don't know whether I can recollect that now or not, Mr. Frank. On this first page, where it states "secured [1719—1630] angle-iron bars in

(Testimony of Carl E. Klitgaard.)

shaft-alley for new flooring support” I had in my notes the amount of angle-iron that went in there. And in the next item I also—

Mr. McCLANAHAN.—Q. What are you referring to?

A. (Contg.) —“supplied and fitted 4 new sheet iron guards for shaft-alley”—

Q. What are you reading from?

A. The specification of work said to have been done in San Francisco. That is “Respondent’s Klitgaard Exhibit No. 1.” To the best of my recollection I had a note opposite that too, as regards how much sheet iron was contained in those four guards. On the same page, the item reading “lagging on main boilers repaired and renewed,” I remember making a note there how much lagging there was. On the same page, the item reading “gears refitted with taper pins and oiling devices attached,” I had a note as regards what the oiling devices were, and how many pins were used. On page 2 of the same exhibit, the item reading “made and fitted new 4” vapor line with flanges from evaporator to main condensor and new hangers fitted,” I had a note on there to the effect that there was 14 feet of pipe; I remember that. And I had a note on as regards how many flanges there were. The same page “run 2½ galvanized suction line from bottom blow to fire pump,” I also had a note there as regards how much pipe was used. The same page the item reading “renewed fittings on whistle line above umbrella” I also had a note as regards what the fittings were. On the same page, the

(Testimony of Carl E. Klitgaard.)

item reading "Made and fitted iron distance pieces for H. P. eccentric rods," I had a note on there as regards the size of that iron. On the same page of the exhibit the item reading, "made and fitted steam gauge boards in engine and fire-rooms, I [1720—1631] also had a note opposite that as regards the size of those boards. On the third page of the exhibit, the item reading "made and fitted new brass valve seats and discs for same," that refers to the engine-room tank manifold. I had the weight of the brass marked down on that in my notes, for I remember that. On the same page, the item reading "supplied one challenge metal ring casting," I had the weight of that ring casting at the time. On the same page, the item reading, "overhauled revolution counter and reconstructed all rods and levers of same," I was aware of all the new material used on that job. There may be more than that, Mr. Frank, but I can't recall any more just now.

Q. That is all that you can remember, now, that you had any notes of or were aware of at that time?

A. That is all I can remember just now on reading it through.

(A recess was taken until 2 P. M.) [1721—1632]

AFTERNOON SESSION.

CARL E. KLITGAARD, cross-examination resumed:

Mr. FRANK.—Q. Mr. Klitgaard, you have referred here to a main journal contract, Schedule No. 8, \$1350? A. Yes, sir.

(Testimony of Carl E. Klitgaard.)

Q. Why was it necessary to do that work?

A. Mr. Gray suggested to Captain Matson that it would be.

Q. I am not asking you who suggested anything. I am asking you what the nature of the condition of the engine was that made that work necessary.

A. The old brasses were loose in the housings.

Q. The old brasses were loose in the housings?

A. Yes, sir.

Q. They were cracked, weren't they?

A. One of them was cracked.

Q. And the housings themselves were worn down at the bottom?

A. The housings were worn down at the bottom?

Q. Were they not? A. No, sir.

Q. Well, at any rate they were not perpendicular, were they? They had to be chipped down?

A. You mean the sides of the house?

Q. Yes.

A. They were not absolutely perpendicular, no.

Q. That was the effect of that condition of the journals upon the action of the crank-shaft?

A. It would allow the crank-shaft to move slightly out of its true position.

Q. That is, it would work athwartship back and forth? A. A little bit.

Q. What do you call a little bit?

A. In this instance probably—I don't know—I should say about a thirty-second of an inch.

[1722—1633]

Q. Is that all? A. About that.

(Testimony of Carl E. Klitgaard.)

Q. Wouldn't you add a couple of thirty-seconds to that? A. No, sir, I don't think I would.

Q. You would not? A. No, sir.

Q. How long had it been in that condition?

A. About as long as I had been on the ship, that I know of.

Q. I suppose an engine in that condition is working well, is it not? You consider it is working well and in good condition for an engine?

A. Would you mind repeating that question. (The Reporter reads the question.) That engine was in fairly good condition.

Q. That is your opinion?

A. Yes, sir; that the engines of the "Hilonian" were in fairly good condition.

Q. Did I understand you this morning to say that the first time you met Mr. Putzar, you were introduced to him, just before this work commenced, by Mr. Gray?

A. Yes, sir; 3 or 4 weeks prior to the commencement of the work.

Q. 3 or 4 weeks prior? A. Yes, sir.

Q. Was that the first time you met him?

A. That was the first time I ever had the pleasure.

Q. You did not know him before that?

A. No, sir, not even by sight.

Q. Why do you lay emphasis upon having had the pleasure?

Mr. McCLANAHAN.—I don't know that the witness did lay emphasis on that.

Mr. FRANK.—Of course you do not know any-

(Testimony of Carl E. Klitgaard.)

thing that happens here.

Mr. McCLANAHAN.—I know all I want to know.

Mr. FRANK.—Q. Just answer the question, Mr. Klitgaard.

A. Did I lay emphasis on it? [1723—1634]

Q. I am asking you why you used that expression with emphasis?

A. I don't think I did use it with emphasis.

Q. You did not? Are you and Mr. Putzar on good terms?

A. We are not enemies, if that is what you mean.

Q. Did you ever see this specification which is marked "Respondent Saunders Exhibit 1" before you came here to testify (pointing)?

A. I don't know whether I have seen that one there, but I have seen one similar to it.

Q. You do not recognize having seen that before?

A. Not that particular copy.

Q. Did you ever see the one that is marked "Siver-son Exhibit A"—did you ever see one like that?

A. I have seen one like it; yes.

Q. Did you ever see one like the one marked Li-belant's Exhibit, Christy "C"?

A. I have seen one like it, with one exception.

Q. What is the exception?

A. The last item. I think the one I saw had on it 25 days as the time limit.

Q. Now, taking up the specifications, whichever copy you wish, Mr. Klitgaard, referring to the first paragraph No. 1 on the specifications, that air-pump body and valve-chest I understood you this morning

(Testimony of Carl E. Klitgaard.)

to say that the joint was made with copper gaskets?

A. I have not said so.

Q. I understood you to.

Mr. McCLANAHAN.—He did not say so. Kinsman said so.

Mr. FRANK.—Oh. Q. Were they made with copper gaskets?

A. To the best of my recollection they were.

Q. Were they not also turned down in the lathe?

A. The faces were faced off in the lathe.

Q. That is, instead of filing, is it not?

A. Yes, sir. [1724—1635]

Q. Now with reference to No. 13. What, if any, supervision did you give to that particular item?

A. I examined all the work that was done to that.

Q. Examined the work? A. Yes, sir.

Q. What do you mean—after it was finished?

A. While it was going on.

Q. Do you remember what they did to those bulk-heads? A. They made them tight.

Q. Is that all that you remember about it?

A. They made them tight; they put some shoes for strengthening on the gusset-frames of the forward tank.

Q. Anything else?

A. I don't remember just now.

Q. You do not remember anything else?

A. No, sir.

Mr. FRANK.—Now, I think we will refer to the report, Mr. McClanahan, that you wished to see. Let me ask you, Mr. Klitgaard, if that is not the report

(Testimony of Carl E. Klitgaard.)

as you turned it in of this work (handing). Just look at the bottom of the pages and see if those are your signatures there.

Mr. McCLANAHAN.—I object to that. The witness can refer to the whole report if he wishes to.

Mr. FRANK.—He certainly can, but I am examining him.

Mr. McCLANAHAN.—You cannot direct him to read that paper as you wish.

Mr. FRANK.—I shall suggest anything I see fit.

Mr. McCLANAHAN.—You need not answer me in that tone of voice.

Mr. FRANK.—I will answer you back in the tone of voice you give.

Mr. McCLANAHAN.—My tone of voice is very quiet.

Mr. FRANK.—Q. Examine the bottom of each of those pages [1725—1636] and tell me whether or not that is not your signature to each one of those.

Mr. McCLANAHAN.—That was not the question you asked him before.

A. Yes, sir.

Mr. McCLANAHAN.—It does not appear that that is his report.

Mr. FRANK.—Q. Are there any changes on the face of that?

Mr. McCLANAHAN.—Q. Examine each sheet, Mr. Klitgaard and see.

A. There are several pencil notations on that.

Mr. FRANK.—Q. Look at those pencil notations and see whether or not they make any changes in the

(Testimony of Carl E. Klitgaard.)

report, and if they do not state it correctly, and also whether or not they are not your notations?

A. They are merely corrections, correcting clerical errors in there. Some of them are mine and some are not mine.

Q. They are all correct, and with the pencil notations it is a true report?

A. Yes, sir. The corrections make the report read as I had intended it to read.

Mr. FRANK.—We ask that that report be marked Libelant's Klitgaard Exhibit No. 2.

(The report is marked "Libelant Klitgaard Exhibit No. 2.")

Mr. FRANK.—I think that is all. Take the witness.

Redirect Examination.

Mr. McCLANAHAN.—Q. Who did you hand this report to representing the Matson Navigation Company?

A. I handed the report to Captain Saunders.

Q. I see, Mr. Klitgaard, that under the title "Work performed but not contracted for," that the report states that the shaft-couplings were turned down. Do you remember what your evidence [1726—1637] was on that subject?

A. Yes, sir; and I also know that the shaft-couplings were not turned down. Why the report reads like that I don't know, unless it was a clerical error made in my own notes.

Q. Was this report made up solely from your

(Testimony of Carl E. Klitgaard.)

notes? A. Made up entirely from my notes.

Q. Did you have any assistance in making it up, from anyone? A. Not that I remember now.

Q. Did you get any information from anyone on which the report is based?

A. No, sir, I don't think I did.

Q. Will you please read the report over to yourself and state if there is anything in that report that is not a fact? Read it carefully.

A. Shall I call them off as I come to them?

Q. Yes, as you come to them.

A. The first item; it says "The thrust-shaft couplings were turned down to a smooth surface and faced off." The thrust-shaft couplings were faced off but they were not turned down.

Q. Proceed. Take up each separate item.

A. It says, in the second item, that the first length of intermediate shaft was removed to the shop. "Forward coupling faced and turned down to correspond to trust-shaft coupling." Owing to the fact that the thrust-shaft coupling was not turned down the intermediate shaft was not turned down on the coupling. Item 53. It says, among various other rotations, under that heading "Rollers for chain-leads from quadrant were raised to proper height." That is a mistake. It was not the rollers from the quadrant for the chain-leads that were raised but for the rollers under the quadrant itself. Item 57, where it says, "Drawings and sketches of various parts of engines supplied," [1727—1638] that report was made because Mr. Putzar told me that he

(Testimony of Carl E. Klitgaard.)

was going to get those drawings and sketches and that no charge was to be made for them. Item No. 1, under "Ship and pipe fitting." It says, "No. 4 tank-tops on port side entirely renewed" and so forth. These tank-tops were not entirely renewed except in so far as this report refers to the bulged or damaged part of the tank-top. No. 13 in that report—

Q. Under the same heading?

A. The same heading: "2 sheet-iron guards for H. P. and L. P. crank-pits supplied and fitted." The guards referred to in this report are not really guards, but are two small straight plates.

Q. What kind of plates?

A. Straight iron plates that were supplied for the side of the H. P. and L. P. crank-pits. Under the caption of "Boilers," item No. 9, it says, "Wrought-iron strap-hangers supplied and fitted on feed and bottom blow-lines as directed." The hangers for the feed-line were supplied and fitted, but the hangers on the bottom blow-line were never supplied. They are reported here as supplied because it was understood that they would be fitted on before the vessel left the port. Under "Minor contracts." Item No. 2, this item deals with the horse-shoes in thrust, "Re-metalled with No. 1 Challenge metal on one side only, etc., etc." I reported here that the price of them was to be \$24.48 each, \$146.88, and in my cross-examination this morning I think I made the statement that I did not remember that or something to that effect. I think that is all.

Q. At the time this report was made had you

(Testimony of Carl E. Klitgaard.)

knowledge of any dispute likely to arise over the bill or the work? A. No, sir. [1728—1639]

Q. I see under “Work performed but not contracted for,” on the 5th page, item 55, the statement as follows: “Delay on dock due to this work about 60 hours.” That refers to what work?

A. The work on the gudgeons and rudder.

Q. That was the work which commenced on the morning of September 11th?

A. Yes, sir, September 11th.

Q. And when did the vessel leave the dock for the Marine railway?

A. I could not tell you the exact date. The 15th, I think.

Q. Mr. Klitgaard, the evidence introduced by the libelant shows that the ship came off the Marine railway at one o'clock P. M. on the 16th of September. Bearing in mind the date when the gudgeon work was commenced on the morning of September 11th, and also the date of September 16th, one P. M., when the vessel came off the Marine railway will you please state how you estimated the delay of 60 hours?

A. The original idea when the ship went on the dock was that she was to be there four days to do work called for in the specifications to the wheel, the tail-shaft and rewooding of the stern, too, etc., but owing to the work which was necessary to the rudder, gudgeons and pintles, and so on, this work was delayed to the extent of about 60 hours.

Q. That is, you mean that the gudgeon work delayed the ship over and above the four days to the

(Testimony of Carl E. Klitgaard.)

extent of 60 hours? A. Yes, sir.

Q. Do you know whether the work on the wheel and stern frame was finished 60 hours before the work on the gudgeons? A. No, sir, it was not.

Q. It was not? A. No, sir.

Q. When was the work on the wheel and stern frame finished, [1729—1640] with reference to the time that the work on the gudgeons was?

A. As far as I recollect, the work on the wheel and stern frame was not finished until the morning she went off.

Q. Was there anything to prevent the carrying on of both classes of work, the work on the wheel and stern frame and the work on the rudder, at the same time?

A. Well, the one might interfere with the other.

Q. Did you keep time on the gudgeon work?

A. No, sir.

Q. Do you know whether it was done as expeditiously as it could have been done under the circumstances? A. Well, I don't know.

Q. You don't know what tools were used by the United Engineering workmen doing the gudgeon work? A. No, sir, I don't remember.

Q. Would it make a difference in the matter of time in doing the work? A. Yes, sir.

Q. Would the character of tools used make a difference in the time of doing the work?

A. Oh, yes, considerable.

Q. Mr. Klitgaard, will you please examine again the part of your report entitled "Work performed

(Testimony of Carl E. Klitgaard.)

but not contracted for,” and state whether any of that work set out under that head comes under the original specifications.

A. Yes, sir, part of the first item does.

Q. What part?

A. That referring to the facing off of the thrust-shaft couplings. The second item, I think, after consideration, also comes under No. 9 of the original specifications. The third item also. Likewise the fourth. No. 8 comes under that same item.

Q. That is, under No. 9 of the specifications?

A. Yes, sir. Part of No. 10 comes under No. 9 of the specifications. [1730—1641]

Q. What part?

A. “Main journal binders planed off on sides and bottom. No. 13,” referring to the “Spare L. P. valve-stem” comes under the compensation work of No. 2 of the original specifications. No. 21, referring to the “coffer-drains being connected,” the assembling of that comes under the main specifications.

Q. Mr. Klitgaard, you say “coffer-drains”?

A. Yes, sir.

Q. What are they?

A. Coffe-drain is an English expression for drains from valve-chests and cylinders.

Q. Is that your expression?

A. This is my expression, yes, evidently. It is in my report. No. 23, referring to the new brass neck bush, would also come under the item No. 2 of the original specifications. No. 34 says, “Circulating pump valve removed to shop and faced off to suit

(Testimony of Carl E. Klitgaard.)

new conditions of air-pump." That obviously comes under No. 1 of the specifications. No. 46, "Straps for hanging spare horseshoes," that item comes under the former contract for the reconstruction of the thrust. No. 58, calling for "new asbestos tape under all cylinder-heads," and so forth, comes under the assembling of the work done under the contract. I think that is about all.

Q. Now, will you please examine the first part of your report and state if there is anything in there that comes under any of the minor contracts that you have testified about.

A. No. 9 "Horseshoes planed on side to secure a true surface of adjusting nuts." That comes under the schedule 4 of the libel, I think.

Q. You say "you think"; what do you mean by that? Is it a matter of speculation?

A. No, sir, not in my mind.

Q. Then state it as a fact.

A. Item 15, "Thread on I. P. rod chased up, and new bronze nuts cast and fitted." That comes [1731—1642] under Schedule 4.

Q. Of the libel?

A. Of the libel. That is all, I think.

Q. Mr. Klitgaard, under the head of "Ship and pipe fitting" on your report, is that work supposed to be work not contracted for. Does it come under the same general heading as the other?

A. Yes, sir.

Q. Would you please go through that heading and tell me if there is any work on that that belongs to

(Testimony of Carl E. Klitgaard.)

the specifications, and in order to shorten the examination you may also examine that heading with reference to whether any of that work belongs to any of the minor contracts?

A. Item No. 7 reading, "Floor plates and supports at back of engine reconstructed and renewed." Part of that work was necessitated by the circulating pump contract. The next item No. 8, part of that was necessitated on account of the work done under No. 9 of the original specifications. No. 19, referring to the "water service," the reconnecting of that comes under the original specifications.

Q. Under the assembling work?

A. Under the assembling of the original specifications. No. 27 referring to the "water service for the thrust" also comes under the reassembling. No. 28, that work was necessitated by the work called for under No. 9 of the original specifications. No. 29, referring to the "connecting of copper pipes, etc.," that comes under the assembling of the work done under the contract.

Q. I refer you to your subdivision under the title "Boilers," and ask you to make the same examination for the same purpose.

A. No. 7. That item is covered by Schedule 9 of the libel. No. 10, that is also covered by No. 9 of the libel.

Q. Referring you to your title "Deck" on this report, I ask you to make the same examination for the same purpose. [1732—1643]

A. No. 6, referring to the "smokestack guys, etc.,"

(Testimony of Carl E. Klitgaard.)

that is covered by Schedule No. 9 of the libel.

Q. Mr. Klitgaard, referring to your report under the title "Minor contracts," I see that there is an omission of the contract covered by Schedule 8 of the libel. Can you explain why that was omitted? No. 8 of the libel is the main-bearing.

A. That contract was made by Captain Matson and Mr. Gray previous to the work attempted on the "Hilonian."

Q. Now, I refer you to your report under the same heading for the "new top for breaching smoke-stack," where you state that the contract is for \$160.

A. Yes, sir.

Q. Calling your attention to Schedule 9, and to your evidence in the case, I ask you to make the explanation, if you have one, why your report calls for \$186?

A. I don't know, unless it is an error in the type-writing of this thing.

Q. Have you any explanation to make why, under these different headings, you included work that you now testify was covered by the original specifications, and also your minor contracts?

A. At the time that report was made, it was made more with the idea of showing the work that had been done, and I never had any idea that there would be a controversy over the matter. I did not go into any great detail as regards segregating the work when I made my report.

Q. Referring you to your subdivision, "Ship and pipe fitting" and to your subdivision "Boilers," and

(Testimony of Carl E. Klitgaard.)

to your subdivision "Deck," do those different subdivisions set out, with the exceptions that you have made, all of the work under those different headings, irrespective of whether it was contract work or extra work? A. Yes, sir, I think so.

Q. Mr. Klitgaard, did you at any time ever discuss with Mr. [1733—1644] Gray the value of the work which was done at this time?

A. Oh, yes, on several occasions.

Q. Was that before or after the controversy arose?

A. This was long before.

Q. Before the controversy? A. Yes, sir.

Q. What was the discussion?

A. As regards to how much the bill would be.

Q. What was Mr. Gray's opinion in that matter?

A. He thought it would go up to about \$20,000, and was very much worried about it.

Q. He was worried about it?

A. Yes, sir, because the bill would go so high.

Q. That is the entire bill, \$20,000? A. Yes, sir.

Q. Have you compared your "Exhibit No. 1" with the Schedule marked 1, attached to the libel?

A. Yes, sir.

Q. What was the result of the comparison?

A. It is a duplicate of Schedule 1 of the libel but it *contains than* Schedule 1 contains.

Q. I will add to my question: Have you compared the work set out in the schedules of the libel, with the work set out on your "Exhibit 1"?

A. Yes, sir.

Q. And they correspond, do they?

(Testimony of Carl E. Klitgaard.)

A. They correspond.

Q. What was the purpose of your asking these various employees of the United Engineering Works about the material, weight, etc., that was going into the work?

A. Oh, merely to find out for my own satisfaction about how much the various jobs cost.

Q. Is that a part of your duty?

A. No, sir. Strictly speaking, I do not think it is.

Q. Did we have any difficulty in getting you to make an estimate on this work?

A. Yes, sir. [1734—1645]

Mr. FRANK.—I should like to know how that is material.

Mr. McCLANAHAN.—Q. What was the difficulty?

Mr. FRANK.—I am still objecting, Mr. McClanahan. That would be a very fine piece of self-serving testimony. I am still objecting as incompetent and immaterial.

Mr. McCLANAHAN.—Q. What was the difficulty?

A. I did not care to estimate the work. I did not want to enter into any controversy about it.

Q. What led you to finally make the estimate?

A. Well, the matter was put up to me that it was my duty, being an ex-employee of the Matson Navigation Company and having been in charge of the work while she was being overhauled, it was my duty to help as much as possible in segregating this work.

(Testimony of Carl E. Klitgaard.)

Q. You are not in the employ of the Matson Navigation Company now, are you? A. No, sir.

Q. Are your relations with Mr. Gray still as friendly as they always have been?

A. I think so; as far as I am concerned they are.

Q. Did Mr. Gray have any connection with the main bearing contract? You started in your cross-examination and mentioned his name in connection with the question that Mr. Frank asked you and you were shut off?

A. The main bearing? That contract was made entirely with Mr. Gray and Captain Matson.

Q. And that is what you were about to say when you were stopped by Mr. Frank?

A. I don't just remember the question.

Mr. McCLANAHAN.—That is all.

Mr. FRANK.—That is all.

(An adjournment was here taken until to-morrow, Saturday, November 4th, 1911, at 10 A. M.) [1735—1646]

Saturday, November 4th, 1911.

Mr. FRANK.—Before we start in on this witness, I want to enter a motion to strike out all the testimony of Mr. Klitgaard relating to his estimates, on the ground that it is entirely hearsay, incompetent, and immaterial.

[Testimony of Lionel Heynemann, for Respondent.]

LIONEL HEYNEMANN, called for the respondent, sworn.

Mr. McCLANAHAN.—Q. What is your name?

A. Lionel Heynemann.

(Testimony of Lionel Heynemann.)

Q. Where do you reside? A. San Francisco.

Q. What is your age?

A. 53, I think, or 54—54.

Q. What is your profession?

A. I am an engineer.

Q. Mr. Heynemann, you have prepared a statement, have you not, of your professional life?

A. I have.

Q. Will you please state what that has been, referring to the statement if you wish?

A. From the beginning?

Q. Yes; right from the start.

A. After a public school education I was an apprentice at the Fulton Iron Works.

Q. In San Francisco? A. In San Francisco.

Q. When was that?

A. That was in 1871. 1872 I went to Europe and studied there at the Royal Polytechnic School at Hanover.

Q. Germany? A. Germany.

Q. How long was your course of study there?

A. About 5 years.

Mr. FRANK.—Q. At Hanover?

A. At Hanover, Germany. Then I took a job as engineer on the Prussian State Railways for one year as an engineer. After that I returned to this country, and for several years was engaged with mining companies [1736—1647] as an engineer.

Mr. McCLANAHAN.—Q. Do you remember what these mining companies were?

A. One was the Sulphur Bank Quicksilver Mining

(Testimony of Lionel Heynemann.)

Company; another was the Almaden Quicksilver Mining Company. After that I was chief engineer of the Pioneer Woolen Mills.

Q. Whereabouts?

A. In San Francisco. Then I was a draughtsman at several of the iron works, the Union Iron Works, the National Iron Works, the Etna Iron Works, and the Honolulu Iron Works.

Q. For how long a period did your engagements with the iron works run?

A. I should say three or four years.

Q. What do you mean by being a draughtsman?

A. A draughtsman is a man that makes the drawings, and the designs for machinery that is afterwards built by the works.

Q. What machinery do these works that you have referred to make?

A. Most of them were engaged in a general line of business. At that time the Union Iron Works was manufacturing marine engines, though not nearly to the extent that they did afterwards.

Q. Did you have any connection while there with that class of work? A. No, sir, I did not.

Q. Proceed.

A. Then I was for six years, I think—six or seven years—with the Southern Pacific Company as an engineer in their construction department.

Q. Construction of what?

A. Most of our business consisted of the construction of the cable roads of this city.

Q. Proceed.

(Testimony of Lionel Heynemann.)

A. After that I became the Secretary of the Fulton Iron Works.

Q. What year was that in?

A. That was in 1892.

Q. The Fulton Iron Works of this city?

A. San Francisco.

Q. How long did you remain as secretary of the Fulton Iron Works?

A. About 13 years. [1737—1648]

Q. Will you state in detail what line of work your duties as secretary brought you in contact with during the period you were secretary, with special reference to marine matters?

A. Besides the regular duties of a secretary in any corporation I exercised a general supervision over the works, attended to their finances, and made a great many estimates for work, put in bids, and rustled around for orders.

Q. Does your statement apply at all to marine work?

A. Yes, sir. Most of the estimates I made were on the marine end of it.

Q. What class of marine work did you make estimates on? A. Nearly entirely repair work.

Q. Repairs to what? A. Repairs to vessels.

Q. What parts of vessels? A. All parts.

Q. Has that anything to do with the repairs to machinery? A. Yes, sir.

Q. When estimates were made, and the Fulton Iron Works secured the work, did you have anything to do with the construction of the work or the mak-

(Testimony of Lionel Heynemann.)

ing of repairs?

A. Very little. Our marine superintendent attended to that part of it.

Q. When did you leave the Fulton Iron Works?

A. 1905, I think. Since that time I have been the consulting engineer and Pacific Coast Manager for the Goldschmidt Thermit Company.

Q. Has that been your sole occupation since 1905?

A. No, sir. I have also represented the Overhead Crane concern of Milwaukee.

Q. Have those two been your sole occupations?

A. Those two have been my sole occupations, with the exception of once in a while being consulted in reference to marine work.

Q. Consulted by whom? Not naming the parties, but the class.

A. By different companies. [1738—1649]

Q. By different companies? A. Yes, sir.

Q. What kind of companies?

A. Steamship companies.

Q. What do you mean by being consulted?

A. In reference to the decision, or rather in reference to giving them an opinion about certain debatable conditions, or conditions that were debated at the time; in other words, giving an opinion.

Q. Conditions that were debatable pertaining to what? A. Pertaining to steamers.

Q. What parts of steamers?

A. I don't know that I can answer that question in that way. I have been consulted in cases where the resistance of vessels at sea formed quite a part.

(Testimony of Lionel Heynemann.)

Q. Have you had any work of that character with reference to machinery of vessels? A. Yes, sir.

Q. You understand, Mr. Heynemann, that you have been called here to testify in regard to machinery work, do you not?

A. Not alone machinery work, but also hull work.

Q. You know you have been called to testify as to machinery? A. Yes, sir.

Q. Therefore, we are interested in knowing your experience particularly in that line? A. Yes, sir.

Q. What was the foundation of your marine education?

A. My experience at the Fulton Iron Works, besides my theoretical education in Hanover.

Q. At the Royal Polytechnic School?

A. Yes, sir.

Q. What period of time in your professional life would you say your experience as a marine engineer has extended over?

A. That is rather a difficult question to answer for me, because during the time I was draughtsman with some of the other foundries, I came in direct connection with marine work, and the periods were intermittent. At the Aetna Iron Works I do not think we had any [1739—1650] marine work; at the Honolulu Works we had some; so that in that way my experience has been intermittent.

Q. Would that statement apply to your experience at the Fulton Iron Works?

A. No, sir. At the Fulton Iron Works we had marine work all the time.

(Testimony of Lionel Heynemann.)

Q. That you were connected with?

A. Yes, sir.

Q. In the way that you have stated?

A. Yes, sir.

Q. I understand that included making estimates?

A. Yes, sir; that included making estimates and getting work, putting in bids.

Q. Were you familiar with the cost of material and labor put into and used upon marine repair work in the year 1909? A. Yes, sir.

Q. You understand the nature of this litigation, do you not, Mr. Heynemann? A. Yes, sir.

Q. It is a suit brought by the United Engineering Works against the Matson Navigation Company for a repair bill on the steamer "Hilonian"?

A. Yes, sir.

Q. Will you please examine the first three pages of Schedule 1 attached to the libel in this case, and also Schedules 2 to 10, attached to the libel in this case, and state whether you are familiar with the matter contained therein.

A. I take for granted that the first three pages is a copy of the billhead of the United Engineering Works without reading it through item by item. The same applies to Schedule 2. The same to Schedule 3.

Q. You may disregard the second page of Schedule 3 and pass on to Schedule 4.

A. Schedule 4—

Q. Make your comment in regard to Schedule 4.

(Testimony of Lionel Heynemann.)

A. The same applies to Schedule 4. The same applies to 5; the same applies to 6, 7, 8, 9 and 10. [1740—1651]

Q. Mr. Heynemann, in the course of your examination you may assume that this document which I hand you, which is marked "Respondent Kinsman Exhibit No. 2," is a copy of the first three pages of Schedule 1 attached to the libel. You may also assume that the paper I now hand you marked "Respondent Sanders Exhibit No. 1" is a copy of specifications prepared by the respondent in this case and submitted for bids to the United Engineering Works, the libelant. You may assume also that the bid of the United Engineering Works for the work covered by the specifications was accepted, the work to be done for the sum of \$11,749 on a 25-day time limit, calendar days. You may also assume that after the work was undertaken by the United Engineering Works that by reason of certain agreements between representatives of the respondent and the libelant certain changes were made in the work called for by the specifications; that the changes so made were agreed to be made without affecting the contract; that there was a change of this character made in the second item of the specification; that there was a change of this character made in the fourth item; and in the fifth, and the seventh, and in the 14th. You may also further assume that the "Hilonian" was delivered at the yards of the United Engineering Works, to the libelant, on the morning of the 23d of August, 1909. You may also assume that in the

(Testimony of Lionel Heynemann.)

course of the work the vessel was docked on the marine railway of the United Engineering Works at 1 o'clock on the 10th of September, 1909 and left the marine railway at 1 o'clock on the 16th of September, 1909. You may also assume that there are six holidays, including Sundays, in the period of 25-calendar days running from the 23d of August, 1909. I think that is all for the present. I will ask you to bear in mind during your examination [1741—1652] these various assumptions. However, I will make one or two more, while I think of it. You may assume, Mr. Heynemann, that there is no dispute between the parties in this action over the sum of \$170.06 found on schedule 2 of the libel. You may assume there is no dispute between the parties to the sum of \$540.61 found on the first page of schedule 3 of the libel. You may assume as to schedule 4 that there is no dispute between the parties as to the first item of \$330, as to the fourth item of \$50, or to the fifth item of \$40. You may assume there is no dispute between the parties over the charges found on schedules 5, 6, 7 and 8; you may assume that there is no dispute between the parties as to the charge found on schedule 9 reading as follows: "To construction of new smokestack removing old and installing new \$900," and that there is no dispute over the charge found on the 10th schedule. You may also assume that under the original specification the crank-shaft of the steamer "Hilonian," called for removal under the 9th specification, was not removed from the ship. Showing you "Kinsman's Exhibit

(Testimony of Lionel Heynemann.)

No. 2," Mr. Heynemann, I will ask you if you have made an examination of any part of that work.

A. I have.

Q. Have you done it alone, or in collaboration with *some else*?

A. I have done it in collaboration with Mr. Gardner.

Q. Mr. Fred Gardner? A. Mr. Fred Gardner.

Q. Who is Mr. Gardner?

A. Mr. Gardner is a consulting engineer.

Q. Of this city? A. Of San Francisco.

Q. Where was this inspection made?

A. On the steamer "Hilonian."

Q. While in this port? A. While in this port.

[1742—1653]

Q. Have you made such inspection and examination more than once? A. Yes, sir.

Q. How many times have you?

A. I have made it at least six times.

Q. Each time with Mr. Gardner?

A. No, sir; I was alone once or twice—once. I was alone once that I positively remember.

Q. What was that, what day of the week if you cannot place it any better?

A. I think that was on a Sunday. I know it was on a Sunday.

Q. At the times of inspection with Mr. Gardner, how were you enabled to see the work that had been done?

A. We were taken around by Captain Saunders and Mr. Kinsman, Mr. Kinsman, particularly. Cap-

(Testimony of Lionel Heynemann.)

tain Saunders was not always there.

Q. And what did Mr. Kinsman do?

A. Mr. Kinsman went through every item of the billhead and the contract, showing us the work and explaining what had been done.

Q. How long a time, approximately, were you engaged in inspecting this work on these several occasions?

A. That is difficult for me to answer. I do not remember.

Q. Do not drop that there. Was it a matter of minutes or fractions of minutes?

A. It was a matter of hours.

Q. On each occasion?

A. On each occasion; a matter of a good many hours, I will say, on each occasion.

Q. Can you remember any particular occasion when it was a number of hours that you might testify to? A. No, sir; I could not.

Q. What do you mean by a good many hours?

A. 7 or 8 hours.

Q. What did you and Mr. Gardner do aside from receiving [1743—1654] from Mr. Kinsman and Captain Saunders statements in regard to the work and the view of the work? A. We measured it up.

Q. What do you mean by "measured it up"?

A. Took our footrule and measured the sizes of different work so as to enable us to make an intelligent estimate.

Q. Did you do anything else besides measuring the work? A. We made a few rough sketches.

(Testimony of Lionel Heynemann.)

Q. Anything else?

A. I should say that we did all that we could think of so as to enable us to make an intelligent estimate.

Q. An intelligent estimate of what?

A. Of the work done under the contract.

Q. You mean estimate of the value?

A. Estimate of the value of the work.

Q. I think I will let you take "Kinsman Exhibit No. 2" and you may have also in your hand "Respondent Saunder's Exhibit No. 1." Referring to "Respondent Saunders Exhibit No. 1," first, I will ask you whether you know what work was done on the "Hilonian" instead of the work called for by No. 2 of the specifications.

Mr. FRANK.—Are you calling now for something that this witness knows of his own knowledge or on what is his knowledge based—something that is told to him.

Mr. McCLANAHAN.—You will find out.

Mr. FRANK.—I want to find out.

Q. Is that the only evidence?

A. It was based on what we saw.

Q. What was pointed out to you?

A. Yes, sir. Not alone pointed out, but we saw.

Q. It was described to you and pointed out to you on the ship [1744—1655] and at the time you were there with Mr. Kinsman, as to what you saw as you have just testified? A. Yes, sir.

Mr. FRANK.—I certainly object to that as calling for hearsay testimony.

Mr. McCLANAHAN.—Q. Proceed. What work

(Testimony of Lionel Heynemann.)

was done instead of the work called for under No. 2?

A. Instead of No. 2, the low-pressure valve and face were not planed off, and the work as specified under No. 2 was not done. Instead a balance-cylinder was made as a recompense for not doing the work specified under No. 2.

Q. Did you see that balance-cylinder?

A. I did.

Q. Did you make an examination of it?

A. I did.

Q. And the work in connection with it?

A. I did.

Q. Calling your attention to No. 4 of the specifications, I will ask you the same question: what was done in regard to that specification that was not called for by the specifications?

Mr. FRANK.—Q. It is understood that all your information is the same as you have already testified to with respect to No. 2?

A. Am I asked the question?

Q. You are asked the question. A. Yes, sir.

Mr. FRANK.—The same objection to all this examination.

A. With reference to No. 4 the work was not done exactly as specified. It states, "If plates show tendency to spring, place about 8 or 10 screwed stays in each." This work was not done but instead a heavier plate than the original one was furnished and finished and put in place. With reference to the "reconstruction of the H. P. and I. P. shoes as directed," these were not reconstructed but new

(Testimony of Lionel Heynemann.)

shoes made instead, and a certain amount of Challenge metal used in connection with the same.
[1745—1656]

Mr. McCLANAHAN.—Q. I understand, Mr. Heynemann, that you have made an estimate of the value of the work performed on the occasion in suit?

A. Yes, sir.

Q. I will also ask you, now, before I forget it, in passing on, whether or no any allowance as an extra was made to the United Engineering Works, in your estimate on the Challenge metal referred to in your last answer. A. It was allowed as an extra.

Q. Passing, now, to No. 5 of the original specifications, I will ask you the same question that I did with reference to No. 4.

Mr. FRANK.—The same objection.

A. It calls for the remetalling of the H. P. and L. P. eccentric straps, with best grade of Challenge metal and other work. Instead of the work having been done as per this item No. 5, only the H. P. eccentric strap was remetalled and the low pressure was furnished and fitted with bronze straps and we made an extra allowance for this bronze. These bronze straps were also pocketed and babbitted with Challenge metal, and we made an allowance for this extra Challenge metal in our estimates, and also for the bronze.

Mr. McCLANAHAN.—Q. When you say “we” you refer to— A. To Mr. Gardner and myself.

Q. Turning, now, to the seventh item of the specification, I will ask you the same question with refer-

(Testimony of Lionel Heynemann.)

ence to the question asked in regard to No. 4.

Mr. FRANK.—The same objection.

A. This work was not done as specified. Instead, however, a bronze patch was fitted to the housings to perform the same purpose for which the iron column was intended.

Mr. McCLANAHAN.—Q. I will ask you the same question with reference to the 14th item of the specifications? [1746—1657]

Mr. FRANK.—The same objection.

A. The windlass was not repaired.

Mr. McCLANAHAN.—Q. You are now referring to the 14th item?

A. I am now referring to the 14th item. The windlass was not repaired, but instead there was two channel iron stanchions placed under the forecastle-head deck.

Q. I have asked you with reference to No. 9, to assume that the crank-shaft was not removed from the ship? A. Yes, sir.

Q. In order to save time and expedite your examination, I am going to ask you to take “Kinsman Exhibit 2” and go over it, item by item, commencing with the first, and the questions which you are to answer in regard to each item will cover the matter of your having seen or not seen the item under discussion, as well as whether in your opinion the item under discussion should properly belong to any one of the specification items or to any one of the minor contracts which you have been shown as attached to the libel numbered 4 to 10, and, before commencing

(Testimony of Lionel Heynemann.)

your statement, I am reminded to make another assumption for your benefit. You may assume that at the time of the repairs in question the United Engineering Works were under a contract with the Matson Navigation Company to supply and install complete and in running order one circulator, having a 30-inch composition runner, and 8 inches by 6 inches single piston-valve engine, all to be complete, coupled up with all pipe connections, valves, etc. Now, will you commence, Mr. Heynemann, with No. 1 of "Kinsman Exhibit No. 2" and answer as to that item the questions that are included in my question?

A. No. 1; most of that work I saw. The angle-irons under the tank-top could not be seen.

Mr. FRANK.—Q. In order also to save time, we understand [1747—1658] whenever you say you saw any work, you mean that the work was pointed out to you by Kinsman? That is the only occasion.

A. No, sir; I saw the tank-top, not the work, but I saw actually the tank-top.

Q. I mean the particular extent of the work was pointed out to you by Kinsman. You did not see the work when it was being done?

Mr. McCLANAHAN—I object to Mr. Frank at this time attempting to limit the statement of the witness in the way suggested. I think when I have finished with my examination that Mr. Frank will see that all the matter has been covered, and if not all covered he will have the opportunity to cross-examine. A. No, sir.

(Testimony of Lionel Heynemann.)

Mr. McCLANAHAN.—We will make the admission that Mr. Heynemann did not see the work as it was being done.

The WITNESS.—I would very much prefer, because it would be less confusing to me, if I could go through these specifications first in one way and then in another.

Mr. McCLANAHAN.—Q. I will fix it so that it will not be confusing, and will assist you to that end. I simply make this suggestion in order to save the record and time. I am going to ask you about the tank-top. You say you saw the tank-top?

A. I saw the tank-top, but could not see the support under the tank-top. At the same time the rivet work shows on the tank-top itself showing very well what work was done below the tank-top.

Q. You know the construction underneath the tank-top? A. Yes, sir.

Q. Will you please state what you did with reference to an inspection, if anything, on the tank-top, and the work performed? [1748—1659]

A. We went on board the ship, looked at it, measured it up, counted the number of plates, made a little sketch of it and went through the work as if we had to estimate on it ourselves. I would like to correct my statement to this extent, that while the rivets on the top show the location of the top supports, of course they would not show the location of the bottom angle-irons that are affixed to the skin of the ship.

Q. Will you state now what was the result of your

(Testimony of Lionel Heynemann.)

inspection of the tank-tops with reference to the extent of the work.

A. The work of renewing the tank-tops was limited to the plates that could be seen in No. 4 tank, with the exception of the first plate forward of the after bulkhead of No. 4 tank, and the first plate aft of the forward bulkhead, and besides, the plates in the shaft-alley were not renewed.

Q. That is, on the port side of No. 4 tank?

A. On the port side of the No. 4 tank.

Q. State whether or not the margin-plates were renewed in that tank.

A. The margin-plates were not renewed.

Q. Does that belong to any one of the items of the specifications? A. No, sir, it does not.

Q. How was it figured on by you and Mr. Gardner? As an extra? A. Yes, sir.

Q. Pass to No. 2.

A. We saw the vessel on the drydock and saw the places where the holes had been originally cut and saw the plugs.

Q. Does that belong to any item of the specification? A. I don't think it does.

Q. Is it figured on as an extra?

A. It is figured on as an extra.

Q. Pass to No. 3.

A. With reference to the patches, they [1749—1660] could not be seen. They were covered by the paint. With reference to the 2½ inch sounding-pipe in No. 3 and No. 4 tanks we saw them, and we figured on them as an extra.

(Testimony of Lionel Heynemann.)

Q. When you say "them" as an extra, what do you allude to? A. The sounding-pipes.

Q. As distinguished from the balance of the item?

A. We figured on the whole item as an extra.

Q. Pass to No. 4.

A. We saw them and figured on the whole item as an extra.

Q. Pass to No. 5.

A. The same in reference to No. 5.

Q. Pass to No. 6.

A. With reference to No. 6, most of that work we considered as belonging properly to item No. 1 in the main specifications. We say the floor-plates at the back of the engine, but we only figured for handling these plates because, as I say, we thought it belonged to item No. 1 in reference to removing the air-pump body, and also on account of the contract for the circulator, stating that the pump had to be furnished and installed.

Q. Was there any part of item No. 6 that you did figure on as an extra?

A. Yes, sir, we figured on the handling of the plates as an extra, and we also figured on a small platform that goes over the shaft between the last crank-shaft coupling and the first thrust-shaft coupling.

Q. And that is all? A. That is all.

Q. Pass to No. 7.

A. That answer that I made refers to items 6 and 7.

Q. What part of the answer refers to 7?

A. The raising of the floor-plates and figuring on

(Testimony of Lionel Heynemann.)

them as an extra over the shaft.

Q. Figuring on the floor-plates or the handling?
[1750—1661]

A. The floor-plates and the handling. We figured on the whole item of No. 7 as an extra.

Q. The whole item of No. 7 as an extra?

A. Yes, sir.

Q. Did you see the matter called for in No. 7 as well as No. 6? A. Yes, sir.

Q. Proceed to No. 8.

A. I saw the handrails around the low-pressure valve motion and I. P. and H. P. engines, and figured on the same as an extra. The reconstruction was not figured on broadly, but we understood they were changed to suit either Mr. Kinsman or Mr. Putzar, and we figured on changing the handrails around the L. P. valve motion, and I. P. and H. P. engines.

Q. You figured on that as an extra?

A. As an extra.

Q. Pass to No. 9.

A. We saw them and figured on the same as an extra.

Q. Pass to No. 10.

A. We saw that and figured on the same as an extra.

Q. Pass to No. 11.

A. The same applies to No. 11. The same applies to No. 12. The same applies to No. 13. The same applies to No. 14. The same applies to No. 15. No. 16. No. 17. No. 18. That was something that we could not see. No. 18 we did not see but it was

(Testimony of Lionel Heynemann.)

thoroughly explained to us by Mr. Kinsman, and we figured the same as an extra. No. 19 we saw and figured on the same as an extra. No. 20 we saw and figured on the same as an extra. No. 21 we saw and figured on the same as an extra. No. 22; we saw the body of these valves but we could not see the disc nor the seat, but these were described to us so that we could make a figure on them and we did so as an extra.

Q. Did you see any similar discs? [1751—1662]

A. Yes, sir, and were shown spares on board.

Q. What do you mean by "spares"?

A. Spare discs.

Q. What do you mean by "spares"?

A. A spare is an article that is used as a duplicate, so that in case of one being out of order, the other can be installed.

Q. What spares did you see of item No. 22?

A. We saw a spare valve disc.

Q. Pass to No. 23.

A. In No. 23 we did not see the valve disc, nor the seat. We saw the yoke and the stem, and we figured on the same as an extra, and were able to do so by descriptions given to us by Mr. Kinsman.

Q. Did you see any spares in connection with that item? A. I don't remember that we did.

Q. Pass on to 24.

A. We saw the strap-hangers to the feed but not to the bottom blowlines. We hunted for them but could not find them, so we only figured and allowed as an extra the strap-hangers for the feed.

(Testimony of Lionel Heynemann.)

Q. For the feed-lines?

A. The feed-lines. Item 25; we saw and figured on the same as an extra. Item 26; we did not see the damper but we did see the handle, but by moving the handle we could feel the damper. We knew that the damper was there. We did not figure on the same as an extra because we thought it properly belonged to the installation of the stack which is Schedule No. 9.

Q. Of the libel? A. Of the libel.

Q. That is the nine hundred dollar item on that schedule?

A. Yes, sir, that is the nine hundred dollar item on Schedule 9.

Q. Pass on.

A. No. 27; we saw the extra stanchion but did not figure on the same as we thought it belonged to the [1752—1663] first item in Schedule No. 9, \$900 for the stack and the installation of the same. No. 28 we saw and figured on as an extra. No. 29 we saw, but did not figure on as an extra, as we thought it belonged to the first item in Schedule No. 9 of the libel. No. 30a, we saw and figured on the same as an extra. No. 30b, the same applies to. The same applies to No. 31. No. 32; we diligently sought the broken beam in between decks but it never was pointed out to us, yet we figured on the same from descriptions given to us as an extra.

Q. How were you enabled to do that?

A. We were given the sizes of the patch, and we know what the stanchion is, and all that it meant was

(Testimony of Lionel Heynemann.)

the putting on of the patch on the deck-beams. We knew the height of the deck-beams and also knew what the stanchion is.

Q. How much of an item is that, roughly speaking?

A. I don't remember now. I don't remember what our estimate is.

Q. Is it a matter of considerable value?

A. No, sir, it is not a matter of considerable value.

Q. Proceed.

A. No. 33 we saw and figured on as an extra. No. 34 the same. 35 the same. 36 the same. 37 the same. 38 the same. 39 we did not see but we saw the diameter of the rudder-stock and were able to figure on the brass liner for the same as an extra. No. 40 we saw. When I say we saw it, we saw one edge of it and figured on the same as an extra. No. 41; we saw the chain leads but we did not figure on this work because the work was not done. Instead, however, there was some rollers under the quadrant that were raised, and which we saw and figured on as an extra. No. 42 we saw and figured on the same as an extra. The same in No. 43. The same [1753—1664] in No. 44. No. 45; we could not see the key way in the new propeller, but figured on the same as an extra—no, we did not figure on the same as an extra because item No. 9 in the general specifications calls for new wheel to be fitted to the satisfaction of the owner's representative.

Q. Why did you not figure on it?

A. We did not figure on it because that came under the contract.

(Testimony of Lionel Heynemann.)

Q. Under item 9 of the original specifications?

A. Under item 9 of the original specifications. No. 46 we saw and figured as an extra. No. 47 we saw and figured on as an extra. The same with No. 48. The same with No. 49. The same with No. 50. No. 51; we did not see the valves but we think that the item 51 reads wrong. It reads "all sea suction-valves drilled and tapped." It should read "all sea suction valve bodies drilled and tapped." We saw the valve bodies and figured on the same as an extra. Item 52; we saw item 52 and figured on the same as an extra. No. 53; we saw the propeller-blade but did not figure on the chipping of the one blade on account of the last item, item No. 9 of the general specifications.

Q. You say on the chipping of the one blade?

A. The chipping of each blade, I mean, on account of item No. 9 of the specifications.

Q. That is, in your opinion, it belongs to No. 9?

A. It belongs to the last item of No. 9 in the specifications: "new wheel to be fitted to the satisfaction of owner's representative." No. 54, we saw and figured on the same as an extra. No. 55 we saw and figured on the same as an extra. No. 56 the same. [1754—1665]

Q. With reference to No. 55, is any part of that chargeable to any one of the items of the specifications?

A. We considered that part of 55 belonged to the reassembling in item No. 9 of the general specifica-

(Testimony of Lionel Heynemann.)

tions, but we did not figure on part of the 4-inch vapor pipe.

Q. Which you did not consider belonged to the general assemblage?

A. Which we did not consider belonged to the general assemblage. No. 56 we saw and figured on the same as an extra. No. 57 we saw and figured on the same as an extra. No. 58 we considered as belonging to item No. 9 of the specifications, but we did make an allowance for joints.

Q. For new joints, do you mean?

A. Yes, sir, for new joints. With reference to item No. 59, we did not see these fittings on the whistle-line because they had been removed by the crew and flanges put on instead. At the same time it was described to us what fittings were used, and we figured on the same as an extra. No. 60 we saw and figured on the same as an extra. No. 61 we saw and figured on the same as an extra. No. 62; we did not consider that the bilge pump body was removed for the purpose stated, that is, to braze the copper pipe. It was made necessary by the removal of the air-pump which comes under item No. 1 of the general specifications.

Q. Did you see it?

A. We saw it. No. 63 we saw and figured on the same as an extra. The same with regard to No. 64. No. 65 we could not see, because the floating top is part of the interior of the air-pump, but very accurate descriptions were given to us enabling us to figure on the same, which we did as an extra. No.

(Testimony of Lionel Heynemann.)

66, we did not see, but from descriptions, were able to figure on the same as an extra. No. 67 we [1755—1666] saw but did not figure on the same because it belonged to item No. 1 of the general specifications.

Q. Calling your attention to item 67, I will ask you if that is at all connected with any item of the specifications? A. It is connected with item 11.

Q. In what particular?

A. Item 67 calls for the removal of the circulating pump-valve to shop. Item No. 11 of the general specifications calls for the removal of the valve-chamber of circulating pump, to be removed “and a plate to take old studs fitted.”

Q. Is the valve-chamber the same as the pump-valve? A. No, sir.

Q. What connection has it with item 11?

A. It has this connection. The circulating pump-valve had to be faced off in order to form a support and to fit the plate that was arranged to take the circulating pump discharge.

Q. As called for by item 11?

A. As called for by item 11.

Q. Proceed.

A. We saw No. 68 and figured on the same as an extra.

Q. Referring again to No. 67, I understand you to say you did not figure on that?

A. No, sir, we did not figure on that. No. 68 we saw and figured on that as an extra. The same with No. 69. No. 70; we did not figure on turning down

(Testimony of Lionel Heynemann.)

the thrust shaft couplings because we could see no evidence that they ever had been turned down. With reference to the facing off we considered that that belonged to item No. 9.

Q. If the couplings had been turned down would there have been evidence of the work?

A. Yes, sir.

Q. Pass on to 71.

A. We saw the same and figured on the same as an extra. [1756—1667]

Q. Are you quite sure that that item 71 does not belong under Schedule 9 of the specifications?

A. I remember that we figured on turning the bearings in the stuffing-boxes on each end of the thrust shaft as an extra.

Q. And the balance?

A. The balance came under item No. 9.

Q. Proceed.

A. No. 71 we saw and figured on the same as an extra. No. 73 the same. No. 74 we saw, but we did not figure on the same as an extra as we considered that it belonged to item No. 9.

Q. Proceed.

A. We did not figure on item 75, though we saw all the shaft-bearings, as we considered that as belonging to item No. 9. Item No. 76 we saw, but did not figure on the same as it belongs to item No. 9 of the general specifications. The same with reference to item No. 77. Regarding No. 78, we saw the water-service, but I believe that we considered that that belonged properly to the assembling as specified

(Testimony of Lionel Heynemann.)

in item No. 9 of the general specifications. No. 79 reads: "Trued up I. W. P. crank-shaft by hand." That is no doubt a typewriting error, and should read "Trued up I. W. P. crank-pin by hand." We did not figure on that as an extra because we thought it belonged to item No. 9 of the general specifications. No. 80 we saw but considered that that belonged to item No. 9, therefore did not figure on the same as an extra. No. 81; we saw the horseshoes, but did not figure on the same as an extra because item No. 9 of the general specifications calls for thrust-rings to be refitted after shafting is lined up.

Q. That does not help us, Mr. Heynemann. The item calls for the planing off on the sides of the horseshoes?

A. Item 9 of the general specifications calls for these rings to be refitted after shafting is lined up. Now, when [1757—1668] the shafting is lined up, it means that if the horseshoes do not fit that they have got to be remetalled, therefore no extra charge should be made for the same.

Q. Remetalled? A. Or returned.

Q. When you refer to rings, do you mean horseshoes? A. Yes, sir.

Q. Are they the same thing?

A. No, sir. Thrust-rings in this case, I suppose, are intended to mean thrust-collars. When the collars are turned it means necessarily that the horseshoes do not fit.

Q. Proceed.

A. No. 82, we considered that No. 82 belonged to

(Testimony of Lionel Heynemann.)

item No. 9. We saw the same but did not figure on them as an extra except with reference to the hand-holes being enlarged, and the holes plugged. Those we did figure on as an extra.

Q. Proceed.

A. No. 83, we did not figure on though we saw them, believing them to be covered by item No. 9 of the general specifications. No. 84; we did not see the valves, but had them described to us and we did figure on the same as an extra. With reference to No. 85, we saw the items under No. 85 and figured on the same as an extra. The same with No. 86. The same with No. 87. With regard to No. 88 we saw the same, that is, we did not see the piston, but saw the follower as a spare triced up to one of the bulkheads in the engine-room department.

Q. How did you figure on No. 88?

A. We saw the spare.

Q. How did you figure on it?

A. We measured it up.

Q. Was it figured on as an extra?

A. Yes, sir, it was figured on as an extra; that is, the follower was figured on as an extra—no, let me see. One of [1758—1669] the bills, Schedule No. 3—

Q. That schedule is withdrawn.

A. Schedule 3, that is right. On the last item of the bill-head it calls for "Making one low-pressure follower."

Q. What has that to do with item 88? Read item 88 again.

(Testimony of Lionel Heynemann.)

A. It calls for a low-pressure piston and follower faced off on ring packing bearing faces. With reference to 89—

Q. Let us clean up 88. Was it figured on as an extra?

A. I do not remember whether we figured on that as an extra or not.

(A recess was here taken until 2 P. M.) [1759—1670]

AFTERNOON SESSION.

LIONEL HEYNEMANN, direct examination resumed:

The WITNESS.—With reference to No. 88, I stated I did not remember whether we figured on that as an extra or not. I have since refreshed my memory and we did figure on the facing off of the ring packing bearing faces as an extra.

A. Yes, sir.

Mr. McCLANAHAN.—Q. Proceed.

A. No. 89; the item is not to be understood in the way it reads. We took it to mean that the spare low-pressure valve stem was lengthened out, and we considered that covered by item 2 of the general specifications.

Q. That is the compensation work?

A. The compensation work.

Q. Did you see that?

A. Yes, sir. Item 90; we saw that. We also saw the new nut for valve, and think that comes under the same compensation work as item 2 of the general specifications. The same with No. 91. We saw

(Testimony of Lionel Heynemann.)

that, but did not figure on as an extra.

Q. For what reason?

A. For the reason that it comes under item 2 of the general specifications. No. 92 we saw and figured on as an extra. No. 93 the same. No. 94 we saw, but considered that that was covered by the compensation work in item No. 5 of the general specifications. No. 95 we saw and figured on as an extra.

Q. I call your attention to the 5th and 9th items of the specifications, and ask you if No. 95 does not come under one or both of those items?

A. On reconsideration I would [1760—1671] like to correct my statement because I see in the general specifications item No. 5 states that the eccentric straps are to be lead to the satisfaction of owner's representative, and I think the distance pieces under item No. 95 will be covered by that specification.

Q. Was it figured on as an extra?

A. It was not figured on as an extra. No. 96. We did not see the neck bushing in the low-pressure valve chest, and did not figure on it as an extra for the reason that it belongs to compensation work in No. 2 of the general specifications. No. 97 we saw and figured on as an extra.

Q. Is not that the same as No. 96?

A. No, sir. I don't think necessarily it would come under the same as item 96.

Q. It does not come under the second item of the specifications as compensation?

A. No, sir, I don't think it does because—I don't

(Testimony of Lionel Heynemann.)

suppose there is any reason for stating why. No. 98; we saw this, and my impression is—and I am not sure whether we figured on that as an extra or not—my impression is we did not figure on it as an extra on account of Schedule No. 7 covering the same.

Mr. FRANK.—Q. Schedule 7 of the libel?

A. Of the libel. No. 99 we saw and figured on the same as an extra. No. 100 we saw and figured on as an extra. No. 101 we saw and figured on as an extra. No. 102 we saw and figured on as an extra. No. 103 we saw, but we did not figure on this work because we were informed that the United Engineering Works made use of the turning-engine for turning over the main engines, and in doing so broke the eccentric strap and were obliged to renew the same on their own account. No. 104; we think that that came partly under item No. 9 of the general [1761—1672] specifications, but we did figure on part of the item as an extra. No. 105 we saw, and I think we figured on the same as an extra.

Mr. McCLANAHAN.—Q. Would not 105 come, Mr. Heynemann—

A. Under item 9, as assembling?

Q. Yes. A. Yes, sir, I think it might.

Q. The question is, whether you figured on it or whether you did not.

A. I don't remember now whether we figured on that or not. No. 106; "Connected up all coffer-drains using new jointings, bolts, nuts and washers." We considered that this item, No. 106 is a duplication of the item No. 58, and the same pertains there—

(Testimony of Lionel Heynemann.)

fore to 106 as pertains to 58.

Q. What do you mean by that?

A. I mean it is simply a duplication, and we did not figure on it as an extra on that account.

Q. Did you figure on 58 as an extra? You stated that you figured on that as coming under No. 9, except the new joints.

A. Yes, sir. Now, I say that this item No. 106, we considered a duplication of item 58, so that all we did figure on were the new joints. No. 107; we saw and figured on as an extra. No. 108; we saw the globe valve to drain on main steam line, and figured on same as an extra, but the other part of 108, "fitted new brass water service to guides," etc., we did not figure on as an extra on account of item No. 4 of the general specifications.

Q. Mr. Heynemann, is 107, as it appears on the schedule before you, intelligently stated?

A. It is not. It reads "Supplied and fitted 1½ brass nipple and lunk." That "lunk" we took to mean "Lunkenheimer" valve. No. 109 we saw and allowed for an extra. No. 110 [1762—1673] we saw and allowed for an extra. No. 111 we saw and allowed for an extra. No. 112 we saw and allowed for an extra. No. 113 we saw and allowed for an extra. No. 114 we saw and allowed for an extra, except the two ammonia gauges for which we could only find that one had been supplied.

Q. You allowed for one as an extra?

A. We allowed for one as an extra. No. 115 we saw and allowed as an extra. No. 116 we saw and

(Testimony of Lionel Heynemann.)

allowed as an extra. No. 117; we did not see the seats and discs, but they were described to us and we allowed for them as an extra. No. 118 we saw and allowed as an extra. No. 119 we saw and allowed as an extra. No. 120 we saw and allowed as an extra. No. 121; I think we considered that that came under item No. 9 of the general specifications and therefore did not allow for it as an extra. No. 122 we saw. It does not read correctly. It should read, "Made 2 swivel eye-bolts strong backs," instead of "Strove backs." We saw them and allowed for them as an extra. No. 123a; we saw the holes and the eye-bolts but we considered that they were used in assembling and came under item 9 of the general specifications, and we did not allow for them. No. 123b we saw and allowed for that as an extra. No. 124 we saw and allowed for that as an extra. No. 125; we could not see the asbestos tape under the cylinder heads and valve chest-cover, but we were supplied with sufficient information to be able to figure on them as an extra.

Q. Could you see the diameter of the valve-chest?

A. Yes, sir, of the cylinder-covers and the valve chest-covers.

Q. You say that is figured on as an extra?

A. No, sir, I don't think that we did figure on these as an extra. That came under the assembling.
[1763—1674]

Q. Under what item?

A. Under item No. 9 of the general specifications. No. 126 we saw and allowed for the same as an extra.

(Testimony of Lionel Heynemann.)

No. 127 we did not see and did not allow for the same as an extra. No. 128 we saw, but did not allow for the same as an extra because we considered it covered by item No. 1 of the general specifications. No. 129 we saw, but did not allow for the same because we considered it covered by item No. 2 of the general specifications. The same with regard to No. 130. No. 131; we considered that this item was partly covered—I will state first that we saw these shoes and considered that the item was partly covered by item No. 4 of the general specifications, with the exception of the Challenge metal for which we allowed for an extra. No. 132; we saw these straps and considered that it was partly covered by item No. 5, but we did allow for the bronze that the low-pressure straps were made of. I believe we also allowed for some Challenge metal in that same item. No. 133 we saw, but did not allow for as we considered it belonged to item No. 5 of the general specifications. No. 134; we did not allow for the same because we considered that it was covered by the compensation work in item No. 6 of the general specifications.

Q. Did you see the item No. 134?

A. We could not see the interior of the cylinder, but we knew its diameter and it was sufficiently explained to us so that we were able to figure on the same. At the same time we did not allow for it.

Q. Mr. Heynemann, you have referred to compensation work in item No. 6. What is the compensation work there?

A. There is no compensation work. I simply ex-

(Testimony of Lionel Heynemann.)

pressed myself incorrectly. It was covered by item No. 6. [1764—1675]

Q. That is, item No. 134 was covered by item No. 6?

A. Item No. 134 was covered by item No. 6 of the general specifications. No. 135, we did not allow for because—that is, we saw it but we did not allow for the same as it was compensation work for item No. 7. No. 136 we saw but did not allow for the same as we considered it covered by item No. 8.

Q. Of the original specifications?

A. Of the original specifications. No. 137 we saw but we did not allow for the same because we considered that it was covered by item No. 9. No. 138 we saw but did not allow for the same because we considered that it was covered by item No. 10 of the general specifications. The same applies to item 139. We saw—that is, we did not see the sea-valves. We saw the outside of the valves called the bodies but the valves themselves of course we could not see.

Q. That item belongs to No. 10?

A. That item belongs to No. 10, and we did not figure on the same as an extra. Item No. 140 “Made new valve stem and nut.” We considered that that belonged also to item No. 10. That part of item 140, but the other part “Removed valve chamber of circulating pump and fitted plate under same to take old studs fitted,” we considered as being covered by item No. 11 of the general specifications and therefore did not allow as an extra for the same.

Q. The evidence in this case shows that some of

(Testimony of Lionel Heynemann.)

these items that you have testified to as having seen were pointed out to you by Mr. Kinsman, but you have named more items as having been seen by you than Mr. Kinsman mentioned. Was there an inspection of the ship, and an inspection and view of some of these items that Mr. Kinsman did not point out to you? [1765—1676]

Mr. FRANK.—I object to that method of examining the witness as leading.

A. Yes, sir, there was. When we were on board the ship the first few times we could only see that part of the hull that was afloat, but we afterwards visited the vessel on the dock, and there we could see a good many parts of the ship that we had not seen before.

Mr. McCLANAHAN.—Q. In your testimony with reference to these several items on “Kinsman Exhibit No. 2,” you have used the expression quite often “we have seen that item”; what, if anything, besides seeing the item did you do in making up your estimates?

A. In a number of cases where we thought it necessary we took sketches and sizes.

Q. From your inspection of this work was it possible to know that it was repair work?

A. Yes, sir.

Q. You have done a great deal of estimating, have you not, Mr. Heynemann, on repair work?

A. Yes, sir.

Q. For the purpose of bidding on the work?

A. Yes, sir.

(Testimony of Lionel Heynemann.)

Q. By comparison with your past experience in estimating the value of the work, repair work, what were the facilities open to you in making the estimate on this particular work?

A. I considered that in making an estimate for general repair work, and not knowing what you were going to strike, is an entirely different proposition from making an estimate after the work has been performed and when a list is given to you stating exactly what work was done.

Q. Which is the more accurate method of estimating?

A. Certainly the more accurate method of estimating is after the work has been done, and you are then presented with a full [1766—1677] list of this work. In estimating on repair work, very often you allow yourself a margin for safety, and for such work as you may be led into through necessity, and that you are not able to see, and for that reason the estimates vary very considerably on the same specifications.

Q. Before the work is done?

A. Before the work is done.

Q. That statement is not exactly an answer to my question, though it is in part.

A. I would also further state that I don't remember having spent as much time on ever making any bid as I have in looking up this work, making an estimate of this repair work.

Q. I want to know what the facilities for doing so were as compared with your past history.

(Testimony of Lionel Heynemann.)

A. Well, the work was very accurately described; much more so than it would be if we were called on simply to make a bid, and we had much more time to go into the matter thoroughly than we would in the ordinary course of business in making a bid.

Q. What part of this work was simply described to you? A. Described and shown to us.

Q. You made an estimate on the value of this work, did you? A. Yes, sir.

Q. What was the value of the extra work that you have testified to? A. \$6,080.50.

Q. \$6,080. A. Of the extra work?

Q. Yes. Did you place that figure in writing?

A. Yes, sir, I did.

Q. And signed the writing? A. Yes, sir.

Q. I will ask you if that is the writing (handing).

A. Yes, sir, that is the writing. It is \$6,280.50, instead of [1767—1678] \$6,080.50; and we further made an allowance of \$2,000 on top of that on over-time for the extra work.

Q. What did you do that for?

A. We had no means of finding out when the orders for the extra work were given, and we considered that if these extra orders had been delayed in their giving out, that there might have been considerable overtime on the extra work. At the same time we realized that there might have been no extra time necessary. It would entirely depend on when the orders were given, but we thought we wanted to be very liberal, and we therefore allowed what we considered a very large item in the matter of over-

(Testimony of Lionel Heynemann.)

time; and we to-day do not know, perhaps, whether we are not allowing more overtime than is really claimed.

Q. What did you allow on the minor bills which are covered by schedules 2 to 10 of the libel?

A. We allowed \$4,827.07.

Q. Referring you to the minor contracts, as shown by Schedule 4, I will ask you, which of those items you disallowed or modified in your estimate.

A. We allowed the first item.

Q. I am asking you what you did not allow.

A. We did not allow the remetalling of the horse-shoes in the thrust, on one side only, to wit, \$146.88, because we considered that as they were obliged under item 9 of the general specifications to turn the rings of the thrust, that that necessarily implied the remetalling the horseshoes to make them fit. We further could see no evidence that the I. P. piston-rod had been ground. We saw the tool-marks of the turning in the rod, so we deducted from that item \$25. Otherwise we allowed the bill. [1768—1679]

Q. I refer you to schedule 9 of the libel, and ask you which items of that schedule you did not put in your estimate.

A. We did not allow the enlarging of the casing, \$60, nor the new top for breeching, and 2 new turn-buckle hangers, \$180.

Q. Why not?

A. Because the offer of the United Engineering Works reads that they agreed to furnish a new stack and install the same complete.

(Testimony of Lionel Heynemann.)

Q. That is the offer as shown by the schedule?

A. That is the offer as shown by the schedule—no, that is not the offer as shown by the schedule. That schedule does not show that but we saw the letter in which that offer was made.

Q. I should like to see it myself, Mr. Heynemann. Where did you see it?

A. We saw a letter offering to furnish and install. Oh, yes, it does say here, “Remove old stack and install new one.” It does say so here on the schedule. I did not notice it.

Q. Now about this letter that you refer to.

A. I think it must have been a copy of this because I remember seeing the word “install.” I think it must have been the same thing—furnish and install.

Q. Under the heading of that billhead, Mr. Heynemann, give your testimony with reference to the two last items on the bill as to whether or not they were included in the nine hundred dollar charge.

A. Under this particular heading it says, “Remove old stack and install new one. Enlarge casing below umbrella. Make new top for breeching and 2 turn-buckle hangers.”

Q. You are reading the generalization of the entire bill, the three items. Read the statement of what the \$900 was to cover. [1769—1680]

A. It reads, “To construction of new smokestack, removing old and installing new.” We considered that the casing and the breeching came under that specification.

Q. In your estimate of the value of this work,

(Testimony of Lionel Heynemann.)

how did you treat the original contract?

A. We treated the original contract as existing.

Q. I mean with reference to its value.

A. We figured on the original contract in the value as given in the bid of the United Engineering Works, to wit, \$11,749, and we allowed that price for it.

Q. In making your estimate did you or did you not allow as a credit to the Matson Navigation Company any sum or sums of money? A. We did.

Q. What were those credits?

A. We allowed a credit for certain scrap that the United Engineering Works retained of \$535.76.

Q. Anything else?

A. And we also deducted for the failure to remove the crank-shaft out of the ship, and do all the work that was specified to be done on that crank-shaft to the amount of \$1,398.25.

Q. With the credits that you have just referred to, what, in your opinion, is the reasonable fair value of the work shown by "Kinsman Exhibit 2" and Schedules 2, 3, 4, as modified by your previous statements, 5, 6, 7, 8, 9, as modified by your previous statements, and 10?

A. Including the allowance?

Q. Yes. A. \$22,922.56.

Q. Mr. Heynemann, are you able at this time to go into [1770—1681] details with reference to the values fixed by you on these different items?

A. No, sir, I am not.

Q. Are you able to go into details with reference to any of the large amounts? A. No, sir.

(Testimony of Lionel Heynemann.)

Q. Don't you know what you figured on for the gudgeon work?

A. I happen to remember that figure; yes.

Q. What is that?

A. It was either \$2,100 or \$2,200.

Q. Did you make any allowance on that figure of \$2,100 or \$2,200 for extra dockage of the ship?

A. We did.

Q. How much allowance?

A. We made an allowance of about \$1,350.

Q. What do you mean by your statement that this figure placed by you on the value of the work is the reasonable value of it?

A. I mean by that that I consider that that item or that figure covers the value of the labor and material furnished. I will limit that statement by saying that we took the contract price for granted, \$11,749, and if that was too low a price I don't know that we could help it. [1771—1682]

Q. You mean that that figure is one which in your estimation the work could be done at by any of the shops of this city? A. We think so.

Q. At a profit or a loss? A. At a profit.

Q. Mr. Heynemann, in your opinion, would it have been a matter of difficulty to have kept separate account on the time, labor and material put into the extras furnished under the job as distinguished from the original contract? A. I do not think so.

Q. Would it have been difficult to have kept separate the items of time, labor and material put into the extras as distinguished from the minor contracts

(Testimony of Lionel Heynemann.)

or the specification work?

A. No. I think that it requires a good timekeeper to keep these items separate, but I do not think that a good timekeeper should find any difficulty.

Mr. McCLANAHAN.—I think that is all just now.

Cross-examination.

Mr. FRANK.—Q. Mr. Heynemann, is this paper that Mr. McClanahan has shown you the only piece of paper that you have retained of all of your work upon this estimate?

A. I do not know which paper you refer to.

Q. When you gave the figure of \$8,000 and something Mr. McClanahan showed you a paper and asked you whether that was not the figure.

A. Yes.

Q. \$6,000 and something. I ask you, is that the only paper? A. No, it is not.

Mr. FRANK.—I would like to look at that. Mr. McClanahan.

Mr. McCLANAHAN.—Look at what?

Mr. FRANK.—At the paper you showed the witness.

Mr. McCLANAHAN.—I do not think it is proper for you to see it. [1772—1683] But I have no objection.

Mr. FRANK.—Why isn't it proper?

Mr. McCLANAHAN.—You should have called for it at the time.

Mr. FRANK.—Oh, no.

Mr. McCLANAHAN.—I give you warning I am going to introduce it in evidence now that you have

(Testimony of Lionel Heynemann.)

looked at it, if you do not.

Mr. FRANK.—Well, I think you would introduce any old thing in evidence on any excuse; that does not give you the right to introduce it, though.

Mr. McCLANAHAN.—It is a shame to designate that as “any old thing.”

Mr. FRANK.—Q. When was this letter written, Mr. Heynemann, or when was it signed—the one dated there April 29, 1910?

A. It was signed this morning.

Q. Freshly written? A. Yes.

Q. Why did you put that date on?

Mr. McCLANAHAN.—What date?

Mr. FRANK.—Q. April 29, 1910?

A. Because we wrote a letter on that date, and there was an error in it, and so we copied the letter, leaving out the error.

Q. Where is the letter that you copied?

A. I could not tell you.

Q. Why couldn't you tell me?

A. Because I don't know where it is.

Q. When did you copy it?

A. It was copied, as far as I know, this morning. I did not copy it at all.

Mr. FRANK.—Have you got the other letter, Mr. McClanahan?

Mr. McCLANAHAN.—I did not copy it, Mr. Frank.

Mr. FRANK.—Q. Do you know who has got the copy of it—do you know who did copy it?

A. No, I don't.

(Testimony of Lionel Heynemann.)

Q. That is very strange. [1773—1684]

Mr. McCLANAHAN.—Is that a question? If it is addressed to me, I will say this, that I will make the strange thing appear perfectly plain if counsel wants it.

Mr. FRANK.—Q. Did you read the original letter of April, 1910, and compare it with this before you signed this? A. No, I did not.

Q. You did not? A. No.

Q. Do you know whether Mr. Gardner has the original letter?

A. I think very likely he has, though I don't know.

Q. And Mr. Gardner brought this over here to-day for your signature; is that right?

A. No. He did not bring it over here. I signed it in Mr. Gardner's office; he did not bring it here, I signed it in his office.

Q. And then you saw the original letter in Mr. Gardner's office at the time you signed it?

A. No, I did not see it.

Q. You did not see it.

A. But I knew the contents of the original letter.

Q. We will get the original letter and then we will be satisfied.

Mr. McCLANAHAN.—Let it appear that the paper which counsel was handed at his request by me is a copy of a letter dated April 16, 1910, addressed to the Matson Navigation Company and unsigned, and attached to it is a letter also addressed to the Matson Navigation Company dated April 29, 1910, and signed by Fred A. Gardner and L. Heynemann.

(Testimony of Lionel Heynemann.)

Mr. FRANK.—Q. Now, Mr. Heynemann, where are the data on which you made this figure?

A. The data is a copy of what is called here—

Q. (Intg.) No. You have a misunderstanding of what I am asking for. I mean the figures that you made which resulted in this estimate.

A. I have a copy of the figures. [1774—1685]

Q. The detail. A. Well, I have no details at all.

Q. Why have you no details?

A. Because the way we made up this estimate will probably explain it to you why we could not really preserve the details; Mr. Gardner and myself went over the ship together and made sketches and took sizes, and then we met generally in the evening in his office, and we would go through item by item, and he would figure up one item and I would figure up the same item, and then we would agree on a compromise figure between us two; sometimes I would be higher and sometimes he would be; and in that way we simply enumerated opposite the item No. 1 our figure; so in that way the bid was itemized.

Q. What did you do with these figures? Don't you keep a figuring book? All engineers keep a figuring book, don't they? A. No.

Q. You did not keep any figuring book?

A. No. We figured on loose paper.

Q. What did you do with the figures afterwards?

A. I have got that.

Q. Well, that is what I want, Mr. Heynemann.

A. I have got the estimate, item by item, if that is what you want.

(Testimony of Lionel Heynemann.)

Q. No, I want the figures by which you arrived at your itemized estimate.

A. All that I can give you for that are these papers that we have read over and the sketches and this itemized list.

Q. You have not the other figures? A. No, sir.

Q. Well, let us see the itemized list?

A. I have not got it here.

Q. Where is it?

A. It is either home or in my office.

Q. And your sketches?

A. I can gather them together, and I think I can present them to you on Monday.

Q. Is there no way of getting that itemized list this afternoon? [1775—1686]

A. Well, if it is in the office, I might get it.

Q. Well, how far is your office from here?

A. It is on Folsom Street.

Q. Take you about half an hour to go down and get it? A. If it is there; yes.

Q. Well, I am willing to wait your return with that list this afternoon, if you can go and get it.

Mr. McCLANAHAN.—I am not willing to wait. The witness offers to produce it on Monday morning.

Mr. FRANK.—I would like to see it to-day.

Mr. McCLANAHAN.—It is now 23 minutes of 3; we are not going to sit here very much longer; you are not going to finish his cross-examination.

Mr. FRANK.—No. I want to get as far along with it as possible.

(Testimony of Lionel Heynemann.)

Mr. McCLANAHAN.—Go ahead with your cross-examination.

Mr. FRANK.—Oh, no.

Mr. McCLANAHAN.—I will not consent to an adjournment of this hearing for the purpose required by counsel.

Mr. FRANK.—Q. Will you get the material? I am not asking Mr. McClanahan for his consent. I do not know as you control it one way or the other.

Mr. McCLANAHAN.—You will see.

Mr. FRANK.—Q. Will you get this now?

A. Well, it places me in an embarrassing position.

Mr. McCLANAHAN.—Q. Don't mind me, Mr. Heynemann.

A. I don't know as I have a right to.

Mr. McCLANAHAN.—You have a perfect right to.

Mr. FRANK.—Q. Why haven't you a right to?

A. Because I am acting for one side and I feel like obeying the instructions of that side. [1776—1687]

Q. Yes; that has been your position and disposition throughout this investigation, hasn't it?

A. Not at all. On the contrary, I can state to you that when this case was offered to me I did not want to take it for the reason that I stated at the time, I felt more friendly towards the Messrs. Gray and Christy than I did towards the Matson Navigation Company.

Q. But you have taken it, haven't you?

A. I have taken it.

Q. For a fee and a consideration, have you not?

(Testimony of Lionel Heynemann.)

A. Yes. And also let me tell you—

Q. I do not care for that.

A. Pardon me. Let me finish my sentence.

Q. No, I do not care for it.

Mr. McCLANAHAN.—I object to your interrupting the witness.

Mr. FRANK.—He has no right to go on unless in response to a question, and that is not responsive to a question.

Q. Now, I am asking you about the fee; what is the amount of the fee?

Mr. McCLANAHAN.—I object to that and instruct you not to answer.

A. Besides, I don't know.

Mr. FRANK.—Q. You do not know? A. No.

Q. Why don't you know?

A. Because we made no arrangements.

Q. You made no arrangements? A. No.

Q. You left that fee until after you are done testifying?

A. Yes. I have received some part of the fee already.

Q. Then how much have you received on account?

Mr. McCLANAHAN.—I object to that and instruct the witness not to answer. I object to the question as immaterial, irrelevant and incompetent.

[1777—1688]

Mr. FRANK.—Q. You refuse to answer?

A. I refuse to answer.

Mr. FRANK.—Just make a memorandum; that is a matter that will be referred to the Court to compel

(Testimony of Lionel Heynemann.)

the witness to answer.

The WITNESS.—Now, may I complete my sentence?

Mr. FRANK.—Q. No, sir; you are not here to volunteer things.

A. I thought it was in answer to your question.

Q. It is not.

Mr. McCLANAHAN.—How do you know, Mr. Frank, when you have not heard it?

Mr. FRANK.—I have not asked him any question that would be a foundation of the matter he was talking about when I interrupted him.

Mr. McCLANAHAN.—Well, I have to object to counsel's declining to listening to the answer of the witness, and refer that to the Court for determination.

Mr. FRANK.—I think you had better.

Q. Coming back. You have declined to furnish those figures this afternoon, have you? Is that the fact? A. Yes; under instructions of counsel.

Q. Under instructions of counsel? A. Yes.

Mr. McCLANAHAN.—Let it appear perfectly clear that the counsel objects to the interruption of this hearing for that purpose, when the witness has said that he would produce the figures on Monday morning, and does not know even where they are with certainty.

Mr. FRANK.—Q. You are fairly well certain those are in your office, aren't you, Mr. Heynemann?

A. Yes—you mean those referring to the figures that I have given?

(Testimony of Lionel Heynemann.)

Q. Yes, the figures that we are talking about.

A. Yes.

Q. And those sketches and other data?

A. Well, then, I don't [1778—1689] quite understand the question.

Q. What is that? Any other data that you have in the matter?

A. What is the question, I want to know.

Q. You know fairly well, are fairly well satisfied, that those are in your office?

A. Oh, those are in my office. I thought you said "offers." I didn't know you said "office."

Q. What is your answer now?

A. I am not fairly well satisfied that they are in my office; the chances are even they are in one place or the other; but I am sure that I can furnish them on Monday.

Q. You are sure you can furnish them on Monday?

A. Yes.

Q. By the way, referring to this letter, a copy of a letter of April 16, 1910, the yellow sheet, whose signature is attached to that?

A. I don't know what that letter is. If you will permit me to look at it.

Q. The letter referred to in your reply.

A. I think that this letter, a copy of this letter, was signed by Messrs. McClanahan and Derby.

Q. I will also ask you at the same time to produce the original letter, now in the possession of Mr. Gardner, of which this letter of yours of April 29, 1910, is said to be taken from.

(Testimony of Lionel Heynemann.)

Mr. McCLANAHAN.—The letter of Mr. Heynemann?

Mr. FRANK.—Mr. Heynemann and Mr. Gardner, yes.

Mr. McCLANAHAN.—Mr. Frank, you want the original of the yellow sheet letter?

Mr. FRANK.—No, I don't.

Mr. McCLANAHAN.—What do you want?

Mr. FRANK.—I want the letter of April 29, 1910, signed by Mr. [1779—1690] Gardner and Mr. Heynemann, which the witness has stated this was rewritten from this morning.

Mr. McCLANAHAN.—Q. Can you produce that, Mr. Heyneman?

A. I don't know that I can produce it; it was a letter that was written to McClanahan and Derby—oh, no; it was a letter written to the Matson Navigation Company. I could not produce it.

Mr. FRANK.—Q. Why couldn't you? Isn't Mr. Gardner's possession and your possession a joint possession of those papers?

Mr. McCLANAHAN.—I object to that question as calling for a conclusion of law from the witness.

Mr. FRANK.—Q. Isn't that the fact?

A. I don't know whether I can answer that question that way. This is a letter written to the Matson Navigation Company, and I do not know that I would have any right to produce the letter, even if I could, written to the Matson Navigation Company.

Q. Is that the ground that you refuse to purchase the original? A. No. The ground is—

(Testimony of Lionel Heynemann.)

Mr. McCLANAHAN.—Mr. Frank, we can cut this short; if that letter is in existence we will produce it.

Mr. FRANK.—It must be in existence; it was in existence this morning.

Mr. McCLANAHAN.—No one has said it was in existence this morning.

The WITNESS.—I have not seen it.

Mr. FRANK.—The witness has testified that this was copied from it this morning.

The WITNESS.—I do not know that it was, but I believe it was.

Mr. FRANK.—I demand the production of that letter on Monday.

Mr. McCLANAHAN.—It is not necessary to make a demand, as I have consented to produce it if it is possible.

(An adjournment was here taken until Monday, November 6, 1911, at 10 A. M.) [1780—1691]

Monday, November 6th, 1911.

LIONEL HEYNEMANN, recalled.

Mr. McCLANAHAN.—Mr. Heynemann, will you leave the room for a minute or two? I should like to have a talk with Mr. Frank out of your presence. (Whereupon the witness left the room.) Mr. Frank, I think you are chasing rainbows in this matter of the investigation of the change in the letter, and I want to, if possible, put you right on that without encumbering the record. For that purpose I want to submit to you frankly, and in the right spirit, all the data on which you may determine whether you think it is right to put it into the record, because if

(Testimony of Lionel Heynemann.)

we once enter into it, it is going to extend the record to great length. Do you understand me?

Mr. FRANK.—I understand you. (After a colloquy between counsel and the examination of papers.) I think I will have to pursue the examination.

Cross-examination Resumed.

Mr. FRANK.—Q. Mr. Heynemann, have you brought with you this morning the papers that were asked for on Saturday?

A. Yes, sir. (Producing.)

Mr. McCLANAHAN.—Let the record show that the witness produces the original letter of April 29th, 1910, addressed to the Matson Navigation Company and signed Fred A. Gardner and L. Heynemann; and the witness produces four type-written sheets of paper which contain the itemization of price agreed upon between Mr. Heynemann and Mr. Gardner.

Mr. FRANK.—I object to your placing any interpretation [1781—1692] on these papers.

Mr. McCLANAHAN.—That is just what you called for. I am not interpreting but identifying. Also the witness produces—

Mr. FRANK.—One moment. The price which you say was agreed upon between Mr. Gardner and Mr. Heynemann are four typewritten sheets dated April 29th, 1910. Go on now.

Mr. McCLANAHAN.— —entitled at the top “agreed between Mr. Gardner and L. H.” Did you ask for the sketch-book?

Mr. FRANK.—I asked for everything.

(Testimony of Lionel Heynemann.)

Mr. McCLANAHAN.—We produce the sketch-book referred to (handing).

Mr. FRANK.—I do not see very well how I can do anything with this until I have an opportunity to go through this 149-page book, to do it intelligently, and I suggest for that purpose a temporary adjournment.

Mr. McCLANAHAN.—You cannot take that book with you, Mr. Frank, unless you introduce it in evidence.

Mr. FRANK.—Is that the ultimatum?

Mr. McCLANAHAN.—That is the ultimatum. If you introduce it in evidence you can take it.

Mr. FRANK.—I cannot introduce anything in evidence until I know what it is.

Mr. McCLANAHAN.—Take your time; I am not complaining.

Mr. FRANK.—Allow us to adjourn with it to the other room where we can confer on the subject. You are not afraid that we are going to alter it?

Mr. McCLANAHAN.—It is not right that you should take our private records away.

Mr. FRANK.—They are instruments of probable evidence in [1782—1693] this case. We have a perfect right to examine them privately before we are called upon to cross-examine this witness. You understand very well, and it is a matter that you will appreciate, that there is a great deal of very technical detail on which to examine, and I will be utterly helpless without the advice of somebody who understands those subjects. You will understand also that I could not confer in your presence for that purpose.

(Testimony of Lionel Heynemann.)

Mr. McCLANAHAN.—Mr. Frank, I do not think there should be any extended delay of this hearing for that purpose. I am willing to give you a reasonable time to look over the sketch-book, but to adjourn this hearing for that purpose I do not think is necessary at all. How long do you want to look it over?

Mr. FRANK.—I cannot tell until I look into it. I want anyhow, preliminarily, until the afternoon to see what is in this, and then I will probably be advised as to the necessity of any further examination of it.

Mr. McCLANAHAN.—I cannot consent to any adjournment to this afternoon. I will give you an hour to look into it privately.

Mr. FRANK.—I will take what the gods have given me so far, and if it is not sufficient we will have to force the gods to give us some more. Can we take it upstairs?

Mr. McCLANAHAN.—What are you taking?

Mr. FRANK.—I am taking your alleged sketches and your detail.

Mr. McCLANAHAN.—Will you agree to return them in an hour?

Mr. FRANK.—I will come back in an hour and fight it out with you. [1783—1694]

Mr. McCLANAHAN.—And bring the sketches and what else you take?

Mr. FRANK.—Whatever I have got I will bring back with me.

Mr. McCLANAHAN.—You can take an hour, with the express understanding that they are to be returned at a quarter to 12; it is now a quarter to 11.

(Testimony of Lionel Heynemann.)

Mr. FRANK.—And not keep them over the recess?

Mr. McCLANAHAN.—I do not think it is necessary. Let me suggest—

Mr. FRANK.—I do not think you are the judge, Mr. McClanahan, of what is necessary for my case.

Mr. McCLANAHAN.—Those papers are in my custody.

Mr. FRANK.—I understand, but you are expressing your opinion of what is necessary. I say, you are not the judge of what is necessary for my case. I am the judge of that.

Mr. McCLANAHAN.—I am going to expedite this hearing if I possibly can.

Mr. FRANK.—You will try and railroad it through if you possibly can, but you will not be able to do it.

Mr. McCLANAHAN.—I have been very lenient, Mr. Frank, and given you abundance of time that the Court would not allow.

Mr. FRANK.—I do not agree with you.

Mr. McCLANAHAN.—I will make another suggestion, that you proceed now with the cross-examination of Mr. Heynemann, and I will allow you the noon recess for the examination of the sketches.

Mr. FRANK.—I cannot examine him without knowing what is in these schedules. [1784—1695]

Mr. McCLANAHAN.—You mean that your examination is going to be limited entirely to those schedules?

Mr. FRANK.—No, it is not, but it probably will be based on that; after I have looked at the sketches,

(Testimony of Lionel Heynemann.)

I might find there are a good many questions that I might not have asked.

Mr. McCLANAHAN.—I will give you an hour and will expect their return at that time.

Mr. FRANK.—I am very thankful to you.

Mr. McCLANAHAN.—You take them away with the express understanding that you will return them in an hour?

Mr. FRANK.—Yes, I will give you my application or make it to the Court if I need to make it.

(Whereupon counsel for the libelant retired and at 10:53 o'clock the following took place:)

Mr. McCLANAHAN.—I should like to have the record appear that at 7 minutes to 12 a messenger from Mr. Frank's office returns the sketch-book and the itemized and priced four-sheet document which he took away. I suppose that means an adjournment of the hearing until 2 o'clock. I protest against this treatment of the respective parties engaged in this hearing. Mr. Reporter, let the record show that Mr. Heynemann, the witness, is here and that there is no appearance upon the part of the libelant. I suppose we will have to adjourn until 2 o'clock in the hope that Mr. Frank will appear at that time.

(A recess was here taken until 2 P. M.) [1785—1696]

AFTERNOON SESSION.

LIONEL HEYNEMANN, cross-examination resumed:

Mr. FRANK.—Q. Now, Mr. Heynemann, do I

(Testimony of Lionel Heynemann.)

understand that these two documents which you presented this morning, one marked "Steamer 'Hilonian,' 1910," and the other, "The items of charges," marked "Agreed between Mr. Gardner and L. H., April 29th, 1910," are all the data which you used in making up this estimate? A. No, sir, it is not.

Q. What other data did you use?

Mr. McCLANAHAN.—I object to the question as already having been gone into, and it is repetition and encumbering the record. It has been gone into three times.

Mr. FRANK.—Q. Go on, Mr. Heynemann.

A. We had copies of the general specifications, copies of the bill, billheads, copies of the different schedules as we call them, that is, the extra bills, and the ship itself.

Q. That is all?

A. That is all that I can remember.

Q. Now, is this paper, the one called "Agreed between Mr. Gardner and L. H.," an original?

A. What do you call an original?

Q. Well, this paper appears, apparently, to have been newly typewritten. Was this done to-day or yesterday or the day before?

A. That was done on the date of that paper. It was done on April the 29th, if that is the date.

Mr. McCLANAHAN.—Q. 1910? A. 1910.

Mr. FRANK.—Q. This particular paper?

A. That particular paper.

Q. And done from what?

(Testimony of Lionel Heynemann.)

A. Done from a dictation to my typewriter.

[1786—1697]

Q. You must have had something to dictate from?

A. I did.

Q. What was it?

A. I had the original papers on which we figured, and we had put down on a piece of paper the items just as they appear there; No. 1, this item; No. 2, that, etc., and I remember I had that paper, just a lead-pencil memorandum; No. 1 with the prices opposite as shown on this list.

Q. What has become of that paper?

A. I could not tell you. It was just an exact duplicate of what you see before you.

Q. Now, do I understand that the numbers on this "Agreed between Mr. Gardner and L. H." on the left-hand side, are numbers to correspond with the 140 odd numbers in "Respondent Kinsman Exhibit No. 2"? A. Yes, sir.

Q. Now, referring to your "Steamship 'Holonian,' 1910," when was the sketch made on the last page there? A. Quite recently.

Q. What do you mean by "quite recently"?

A. I think it was about September the 21st or 22d.

Q. Of this year? A. Of this year, 1911.

Q. How about sketch 147?

A. That sketch was made long before—long before.

Q. You don't remember the date? A. No, sir.

Mr. McCLANAHAN.—Q. Long before what?

A. Before the date just given.

(Testimony of Lionel Heynemann.)

Mr. FRANK.—Q. Sketch 145?

A. That was made long before the date just given.

Q. Where is the page referred to on the second page as “Estimate page 149”?

A. I could not tell you.

Q. It does not appear there, does it?

A. No, sir, it does not.

Q. How do you account for its absence, Mr. Heynemann?

A. I cannot account for it at all. [1787—1698]

Q. Didn't you put this together at the time that it was made up? A. No, sir.

Q. When did you put it together?

A. I did not put it together at all.

Q. Who did put it together?

A. I think Mr. Gardner's typewriter.

Q. Mr. Gardner's typewriter did?

A. Yes, sir, I believe that she was the culprit.

Q. Have you any recollection of what that estimate was? A. No, sir, I have not.

Q. Is this the only data that either you or Mr. Gardner had?

A. I don't know what you mean by “the only data.” I have stated what data we had.

Q. What I mean to say is, that if Mr. Gardner did not have any other or different data, he acted on this same data. A. On this same data.

Q. And you have no recollection of what that estimate on page 149 is?

A. If you ask me in regard to the amount—

Q. No, I am asking for the detail? A. No, sir.

(Testimony of Lionel Heynemann.)

Q. I show you page 65, and ask you if that also has not just been prepared.

Mr. McCLANAHAN.—I object to the question upon the ground that it carries the inference that the witness has testified that something else has just been prepared.

Mr. FRANK.—Q. Go on Mr. Heynemann.

A. What is the question?

Q. Read it, Mr. Reporter.

(The Reporter reads the question.)

A. I think that sketch is quite recent.

Q. How recent?

A. Possibly within a week or so; a week or 10 days, we will say. [1788—1699]

Q. Would not that be the same of the pages containing 66, 67, 68, 69, 70 and 71?

A. Just let me see. (After examination.) No, that was only the original sketches. That is the original—

Mr. McCLANAHAN.—Q. You must identify these as you turn them over.

A. Pardon me. The sketch under No. 68 was made long ago. The sketch 70 was made long ago. 71 long ago. If you want, Mr. Frank, I will go right through the whole thing and tell you just when those sketches were made. There are a few recent ones.

Q. There are a few recent ones besides those I have pointed out?

A. I don't think so. I think the only recent one is the one we saw on the drydock, the air-pump floating dock that Mr. Kinsman explained to me one day,

(Testimony of Lionel Heynemann.)

and possibly there may be one or two more of that kind, but that is all. Otherwise they were all made at more or less the same time.

Q. Then these sketches that have been put in recently, and the detail contained on them, were not in your possession at the time you made the figures which you have handed me here?

A. Those sketches were not in our possession.

Q. Now, taking the first No. 1 there, for which you make an allowance of \$800— A. Yes, sir.

Q. Will you kindly show us how that \$800 is arrived at? A. I could not show it to you now.

Q. Why could you not show it to me now?

A. Because I would want to have a quiet session all to myself to figure that out.

Q. We will give you a quiet session all to yourself long enough to figure that out if necessary.

A. I refuse to do it. [1789—1700]

Mr. McCLANAHAN.—I object to the question upon the ground that it is asking something unreasonable of the witness.

Mr. FRANK.—Q. Why do you refuse to do it?

A. Because I am very liable to make a mistake.

Q. You mean to say that you could not refigure it the same as you did before?

A. I mean to say that I do not propose to figure out a matter of that kind at a court session. Now, whether I would arrive—I beg pardon—

Q. Finish your answer.

A. I will repeat that I would not think it right to ask me to figure this out at a court session.

(Testimony of Lionel Heynemann.)

Q. You were called into this case, were you not, Mr. Heynemann, according to your memorandum there, on the 16th of April, weren't you?

A. That memorandum is correct.

Q. The 16th of April?

A. I don't remember whether that is the exact date.

Q. And on the 29th of April following you handed in your report in the full detail?

A. I think that is the date.

Q. And in the interim you had made all your examinations and calculations and figures, had you not?

A. No, sir.

Q. You had not? A. No, sir.

Q. What am I to understand by that. Did you not make it during the time between when you were called in to the case and the time you handed in your report?

A. You mean all the calculations? We have made quite a number since then.

Q. You made calculations since you handed in your report? A. Yes, sir.

Q. For what purpose?

A. For the purpose of corroboration largely.

Q. You have not changed any of your figures, have you? A. No, sir. [1790—1701]

Q. So that all of the calculations upon which those figures were based were made between the date you were called in and the date of the report?

A. Yes, sir.

(Testimony of Lionel Heynemann.)

Q. Do you remember the date when you first visited the ship?

A. I don't remember it, no, but I could look it up.

Q. Let us have it.

A. I think it was—I don't find it here, but it was probably a day or two after I was called into the case.

Q. That is about April 17th or April 18th?

A. Yes, sir, somewhere about that date.

Mr. FRANK.—I object to counsel pointing anything out to the witness.

Mr. McCLANAHAN.—I beg counsel's pardon. I was pointing nothing out to the witness. I was examining this paper and happened to have my finger there when the witness looked at it. I am not in the habit, Mr. Frank, of doing what your statement seems to imply.

Mr. FRANK.—If I have made a mistake I am sorry, but it looks very much like it.

The WITNESS.—I will say right here, Mr. Frank, that my memory for dates is not very good. The first visit I made was a few days after I was called into the case.

Q. At that time you and Mr. Gardner went together? A. Yes, sir.

Q. And remained how long?

A. I could not tell you.

Q. Have you any idea at all?

A. Yes, sir, we remained quite a long while, hours.

Q. About how many hours?

A. I could not tell you.

Q. You have not any idea at all?

(Testimony of Lionel Heynemann.)

A. No, sir, it might be 7 hours or 8 hours; it might be 9 hours; we remained there a [1791—1792] great many hours.

Q. Then your limit, say, is 9 hours?

A. I do not limit myself.

Q. You would not limit yourself? A. No, sir.

Q. Was it 10 hours? A. I don't know.

Q. You don't know? A. No, sir.

Q. Was it 12 hours? A. I don't know.

Q. Was it 8 hours? A. I could not tell you.

Q. Can you tell anywhere between the limit of 8 and 12?

A. I don't think you should put it that way, Mr. Frank. I tell you I stayed there quite a number of hours. It may have been 8; it may have been 9; it may have been 10. I don't think it was more than 9 hours.

Q. That is what we were after.

A. I don't think it was.

Q. And remained not more than 9 hours? Do you remember what parts of the ship you visited at that time? A. Yes, sir, fairly well.

Q. What was it?

A. I think on the very first visit we were pretty well over the ship as far as this particular work went.

Q. When did you visit her again?

A. I believe it was on next day after that.

Q. The next day? A. Yes, sir.

Q. How long did you remain then?

A. I would have to make the same statement with regard to that visit as I did with regard to the first.

(Testimony of Lionel Heynemann.)

Q. Make your statement.

A. I don't remember how long it was.

Q. Give us the best recollection you have of it.

A. The best recollection is that it was between 6 and 8 hours.

Q. And when did you visit her again? [1792—1703]

A. I think the third time that I visited her was on Sunday.

Q. About what date?

A. I don't remember. It was sometime in April, towards the end of April; that is, I should say about the 21st or 22d of April. Somewhere along there.

Q. How long did you stay then?

A. I think I stayed there possibly 6 or 7 hours.

Q. That was when you were alone I understand?

A. I was alone on that Sunday.

Q. And the other two visits Mr. Gardner was with you? A. Yes, sir.

Q. When did you visit her again?

A. My memory is not clear on that point. I think there was a little space then—quite a little space.

Q. What do you mean by “quite a little space”?

A. Quite a little lapse of time between the time I—

Q. What do you mean, months?

A. No, sir, between the time I visited her again—I don't remember, Mr. Frank.

Q. Was it days or weeks or months?

A. I could not tell you. I am sure it was not months and I am sure it was not weeks. I think the next visit was quite shortly afterwards, but the num-

(Testimony of Lionel Heynemann.)

ber of days I could not tell.

Q. Was it within a week?

A. I could not tell you that.

Q. You don't know whether it was within a week or not? A. No, sir, I could not tell you.

Q. May it have been beyond a week after that?

A. It may possibly.

Mr. McCLANAHAN.—I suggest, Mr. Frank, that the sketch-book contains a statement of the visits to the "Hilonian." The witness might refresh his memory from it. [1793—1704]

The WITNESS.—I don't see why I should be tested in that way.

Mr. FRANK.—I do not need your aid at present, Mr. McClanahan. When I do I will call on you for it.

Mr. McCLANAHAN.—You were after the dates, I thought, from your examination. The witness may refresh his memory from it and give them to you.

Mr. FRANK.—What is the last answer of the witness, Mr. Reporter?

(The Reporter reads the answer.)

Q. Was it during that particular stay of the "Hilonian" in port?

A. Yes, sir, it must have been. I did not visit her in any other port. It was during her particular stay here in port.

Q. I do not mean that you visited her in any other port; I want to get at whether it was on her return trip, the next visit.

A. I don't remember whether we visited her on

(Testimony of Lionel Heynemann.)

her return trip, but I think we did.

Q. Was that the next visit?

A. I could not tell you that.

Q. You do not know then whether or not you visited her a fourth time before April 29th of that year? A. No, sir, I could not tell you.

Q. You could not tell me that? A. No, sir.

Q. Now, what did you do after the visits on these occasions? Did you repair to Mr. Gardner's office to make figures?

A. Yes, sir, I went to Mr. Gardner's office. My office is on Folsom Street, and his is here in this building and more centrally located. I generally met Mr. Gardner in the evening and we figured the thing right up with the matter fresh in our minds, generally on the days that we had been on the ship, sometimes not.
[1794—1705]

Q. That is, on the same day you had been on the ship, that evening you figured up and arrived at the results which you have indicated on this paper "Agreed between Mr. Gardner and L. H."?

A. I do not say that as a positive fact that it was necessarily that evening, but it was right within that same time that we made these figures together.

Q. Now, Mr. Heynemann, I will again have to ask you to give me some of the details that made up that \$800 which you say you allowed for these tank-tops, and for that purpose that you may take the data that you then had before you, and use it.

Mr. McCLANAHAN.—I object to that upon the ground that it is asking something unreasonable of

(Testimony of Lionel Heynemann.)

the witness, and on the ground that the witness has already given his reasons for refusing to answer it, and this is simply encumbering the record.

Mr. FRANK.—That is a very good legal objection, Mr. McClanahan, but if this witness made the figures once he can make them again, and if he cannot make them again we have very grave doubts whether he made them the first time. We have a right to ask him the situation. He has all the data before him and we insist on him giving us the details of how he figured that as a matter of cross-examination.

A. In answering that I will state that it would be so difficult for me to do it that I do not propose to do it.

Q. You do not propose to do it? A. No, sir.

Q. Let me ask you, Mr. Heynemann, that item refers to the tank-tops, does it not? A. Yes, sir.

Q. In making up that estimate how many lbs. of iron did you allow for? A. I could not tell you.

[1795—1706]

Q. You could not tell me? A. No, sir.

Q. Where did you get your weight of iron that you allowed for?

A. From the measurements that we took on the ship.

Q. Very well; are those the measurements that you have here indicated in your diagram, page 145?

A. Yes, sir, those are the measurements of what we saw.

Q. Taking those measurements now, kindly figure out how many lbs. of iron there were on that surface

(Testimony of Lionel Heynemann.)

shown by those measurements.

A. I can give you that this way, that this material, as near as I can remember, was a quarter inch material and that weighed 11 lbs. to the foot as far as the surface is concerned. These plates are all more or less what are called sketch plates. They are not full plates. This sketch does not represent the actual condition that would be necessary to take into account when you figure on a proposition of this kind. You would have to take a plate and allow for a considerable waste before you could figure on it. This sketch represents a mere skeleton. For me to undertake to figure on a proposition of that kind before you would simply mean that I would be making one mistake after the other, because while that appears to be complete to you it is not complete.

Q. Very well. That is the date you had before you when you made the original figures? A. Yes, sir.

Q. Why cannot you make the same allowances you did before in order to make the complete figure that you did before?

A. I could, but as I have already stated, I don't think it right to ask it; therefore I refuse to do it.

Mr. FRANK.—I think we had better adjourn this meeting until I can get a ruling of the Court upon this subject. [1796—1707] I am going to find out whether or not on cross-examination I have a right to the details by which these amounts are arrived at.

Mr. McCLANAHAN.—You shall not adjourn this hearing with my consent. If you do it will be as far as you leave the room and prevent the hearing from

(Testimony of Lionel Heynemann.)

going on. We shall proceed with this hearing, if I have got anything to say about it. You will have to leave the room and stop the hearing in that way.

Mr. FRANK.—I am sure I do not understand, Mr. McClanahan, the lordly manner in which you are treating this matter. The law provides for certain things which I am entitled to, and I do not like your manner one bit. There are also other ways of stating them different from what you have stated, between gentlemen.

Mr. McCLANAHAN.—I am sorry that I have displeased the gentleman; it is my way. I am perfectly well satisfied with it. The record will show whether I have acted as a gentleman or otherwise, or who has acted as a gentleman or otherwise. The sole objection that I have at this time to a reference of this matter is that the matter has dragged on interminably, concession after concession being made to counsel that has resulted in the drawing out of this case. My time has expired—the limit placed on it by the Court—and I am particularly anxious to finish the case.

Mr. FRANK.—Yes, and—

Mr. McCLANAHAN.— —and for counsel to adjourn this hearing to refer that question to the Court is unreasonable, in my opinion. You can go on and cross-examine the witness, and at some later date the matter can perhaps be referred to the [1797—1708] Court. There is no reason why this examination should be interrupted now Mr. Frank.

Mr. FRANK.—It is a very important point in the

(Testimony of Lionel Heynemann.)

cross-examination of this witness. It is neither unreasonable nor improper, and now is the time to determine it as the basis of a further cross-examination that is to follow. The statement about the matter being lengthened out by reason of concessions to me I challenge.

Mr. McCLANAHAN.—The record will speak for itself.

Mr. FRANK.—Yes, the record will speak for itself. I will go on with this witness as best I can if you insist upon that. I do not think you gain anything by it, either in time or in shortening the record.

Mr. McCLANAHAN.—I think that is the proper course, Mr. Frank, under the circumstances.

Mr. FRANK.—We will see. Go back now, Mr. Bennett, to the examination on the question of this material, and we will make up our connections.

(The Reporter reads from his notes.)

Q. Do you refuse to make any calculation on that subject at all at this time?

A. I have several times made calculations in open court, and I have seen other engineers do the same thing, and their mind is not arranged, or so arranged that they can discard the fact that they are being watched and observed, and there is somebody on top of them to see and watch the results that accrue from their work; and it confuses the engineer and is very liable to cause mistakes.

Q. Is this, then, so delicate an operation, Mr. Heynemann, that the mere fact that somebody is

(Testimony of Lionel Heynemann.)

present would cause you to make [1798—1709] a material error in your calculations?

A. It might, not because it is at all a delicate matter but I think I can explain it best in this way. Supposing I were to arrive at a result that there are contained in the surface shown here approximately 22 times 8. That would be a certain amount of square feet. Multiply that by 11 lbs. That is not a delicate operation at all. But I might make a mistake in multiplying common figures.

Q. That is all you fear?

A. That is all that I fear.

Q. That could very easily be corrected at the time.

A. It could not, Mr. Frank, because one operation succeeds the other, and the final result I might arrive at might be wrong for the reason I may have made some mistake.

Q. Mistake in multiplication?

A. Either in multiplication or addition, some of the elementary processes necessary to arrive at this estimate.

Q. Is that the nature of all the difficulty in the way of making a calculation here and in our presence? A. No, sir, that is not the only one.

Q. What is the other?

A. Another difficulty is to get the thing clearly in your mind, what is to be figured on, and while you can do that when your mind is at rest and at peace you cannot do it when you are under stress. Your mind is on something else. For that reason I do not care to do it.

(Testimony of Lionel Heynemann.)

Q. Those are all the reasons, are they?

A. The main reasons.

Q. The main reasons? A. Yes, sir.

Q. And you cannot tell me, now how much material went into that tank-top.

A. I did not say I could not tell. I said I could tell.

Q. Let us have it.

A. I have given the reason why I do not want to tell. [1799—1710]

Q. I do not think those are valid reasons.

A. I do.

Q. I think you are compelled to answer the question.

A. That is the reason I do not care to make the statement.

Q. Will you tell us how much you allow a lb. for that material?

A. I allowed for the tank-top, as near as I can remember, 11 lbs. to the square foot.

Q. I mean how much price per lb.?

A. We took the price from the bills; I think 4 cents a lb.

Q. You took the price from our own bills?

A. From your own bills; 4 cents, I think it was.

Q. After you got the tank-top—the area of the tank-top, what other details of that tank-top was it that you added in to that calculation?

A. The work below the tank-top.

Q. Show us what the work below the tank-top was, which you added in to that calculation.

(Testimony of Lionel Heynemann.)

A. The sketch shows it.

Q. Point out the sketch.

A. At events, it shows part of it, on page 1.

Q. On page 1?

A. Yes, sir, that is on item 1. I do not think these pages are numbered.

Q. Tell us what that consisted of.

A. It consisted of floors—not flaws.

Q. There were none of those?

A. Angle-irons; a certain amount of work inventing the different compartments that were formed by the intercostals and by having the corners cut off of the plates. Then there was work litening holes.

Q. What do you call the litening holes?

A. The holes that are in a plate so as to lessen the weight, and also establish a means of communication between the two [1800—1711] compartments—the division rather.

Q. Is that all that was done under that?

A. Then came the drilling of any number of holes and riveting. I suppose you refer now merely to that item No. 1, Mr. Frank?

Q. That is what I am referring to.

A. Because they were cleaning out that tank, you will remember.

Q. We will come to that afterwards.

A. And cutting holes in the bottom and so forth.

Q. Of course you did not get down into the tank?

A. We did not.

Q. To see any of this at all? A. We did not.

Q. So you had no means of knowing, for instance,

(Testimony of Lionel Heynemann.)

how large the holes were that were cut in these partitions, did you?

A. We knew they were cut the ordinary sizes—the standard sizes.

Q. How did you know that?

A. Because we know what litening holes are.

Q. That is all the information you had on the subject?

A. We knew the construction of the ship.

Q. Well, you knew nothing about the construction of this particular ship from observation, did you?

A. Yes, sir, we did. That is the only way we did know it.

Q. You were not in the bottom there?

A. No, sir; it was not necessary to be in the bottom.

Q. Is that the way, also, that you arrived at the amount of riveting to be done in there?

A. That is the way we arrived at the amount of riveting. You must not forget that the frames of the ship show beyond the margin-plates, so that the distance between frames is given, and that is the main item in allowing you to figure on what [1801—1712] work there is below the tank-top, the distance between frames.

Q. What did you allow for the girders?

A. What girders do you refer to?

Q. In the bottom?

A. I don't know what you mean by girders.

Q. You don't know whether there were any girders in the bottom?

(Testimony of Lionel Heynemann.)

A. No, sir, I think you mean floors.

Q. I think you referred to it as an intercostal. Let us get back to the question. Read the question, Mr. Reporter.

(The Reporter reads the question.)

A. Yes, sir.

Q. What did you allow for the riveting on the intercostals? A. I don't remember.

Q. You have not any idea? A. No, sir.

Q. Do you remember how much you allowed for cutting the holes in these plates that you call listening holes? A. No, sir, I don't remember.

Q. Have you not any means of getting at it?

A. Not now.

Q. Not now? A. No, sir.

Q. How many hours of labor did you allow for laying the tank-top? A. I don't remember.

Q. You don't remember? A. No, sir.

Q. How did you arrive at the hours of labor?

A. I arrived at that as a result of the knowledge of the particular conditions of this case and put down my figures for it.

Q. What do you mean by the knowledge of the particular conditions of this case?

A. The particular conditions of the work that I knew had to be done.

Q. That is still not clear to me. What do you mean by the "particular conditions"?

A. All the conditions as were shown [1802—1713] by the ship; the sizes of the plates; the distance of the frames; the number of rivets and rivet

(Testimony of Lionel Heynemann.)

holes that had to be drilled, and items of that kind.

Q. Take the rivet holes that had to be drilled; how much time did you allow for drilling the rivet holes?

A. I don't remember how much time it was.

Q. Did you make a figure on a specific number of hours for drilling the rivet holes?

A. I think we did.

Q. You don't remember how much time?

A. No, sir.

Q. Do you remember how much time you allowed for laying any one plate? A. No, sir.

Q. And you don't know anything about the details or the sum of the hours for the work on the tank-top? A. No, sir.

Q. Is there any detail at all connected with that figure that you have in mind now?

A. No, sir; no detail.

Q. Absolutely none?

A. Except the detail I have just described to you.

Q. With regard to the time, the hours worked, you have absolutely no recollection of any detail at all?

A. No, sir.

Q. When was it that you and Mr. Gardner arrived at the detail respecting the hours worked on the tank-top?

A. We arrived at our results in this way: Mr. Gardner made an independent estimate of item No. 1 and I made an independent estimate of item No. 1. Then we compared results and I either endeavored to convince him or he endeavored to convince me, that one's respective figures were correct.

(Testimony of Lionel Heynemann.)

Q. When you compared results did you compare with each other the items by which those results were obtained? A. Very often we did.

Q. Did you in the case of the tank-top? [1803—1714] A. I don't remember.

Q. Do you remember anyone which you did of these 140 items?

A. I could not state positively at this date.

Q. Then how did you yourself arrive at the number of hours which you allowed for this particular labor? A. From the conditions as stated.

Q. What do you mean by "from the conditions as stated"?

A. I mean by that, that we visited the ship and looked at the tank-top, measured up the plates, and the distance between frames and if I am not very much mistaken we measured the pitch of the rivets.

Q. The pitch of what?

A. The pitch of the rivets, and we got as many details as we could, and figured up from those items as a basis.

Q. And you don't remember what you allowed for time for anyone of the several matters that were necessary to be done in order to lay that tank-top?

A. No, sir.

Q. Did you in anywise itemize the labor?

A. How do you mean. In what way?

Q. Did you figure the labor with reference to any particular part of the work?

A. Are you referring to the tank-top?

Q. Yes, always.

(Testimony of Lionel Heynemann.)

A. Will you kindly repeat that question? (The Reporter reads the question.) To any particular part of the work? Why yes, we did.

Q. What particular part of the work?

A. We figured with regard to laying the plates.

Q. Laying plates?

A. Yes, sir, laying the plates and—

Q. Let us take that item—

Mr. McCLANAHAN.—Let the witness finish his answer, Mr. Frank. [1804—1715]

Mr. FRANK.—Let me examine the witness.

Mr. McCLANAHAN.—I object to counsel interrupting the witness in the middle of a sentence.

Mr. FRANK.—We will stop on that first item.

A. Yes, sir.

Q. How did you figure the labor for that item that you have just mentioned?

A. How did we figure it? How did I figure it?

Q. Yes.

A. I don't understand the question, how I figured it. If you want me to give the number of hours that I figured on the labor for laying those plates, I could not do it just now.

Q. You could not do it? A. Not just now.

Q. When could you do it?

A. I could do it when I had the peace of mind to do so; when my mind is perfectly at rest.

Q. Perfectly at rest? A. Yes, sir.

Q. You could not give us any approximation as to the number?

A. I might give you an approximation but I would

(Testimony of Lionel Heynemann.)

prefer not to do it.

Q. Let us have your approximation then.

A. I would rather not do it.

Q. I would rather have it.

A. Then I will refuse to give it to you.

Q. You refuse to give any approximation?

A. Yes, for the reason stated, that I do not want to make any mistakes, for the reasons already given you.

Q. What is the next item on which you figured the labor? A. I don't remember.

Q. You don't remember any part of that work on which you figured the labor, besides the labor of putting down the plates? [1805—1716]

A. Yes, sir, but you did not ask that. You are asking about the next item. I don't remember what the next item was.

Q. You are entirely too literal, Mr. Heynemann. Give us another item, then, if that expression suits you better. A. The large item is the riveting.

Q. How did you figure the labor on the riveting?

A. I shall have to make the same reply that I made in reference to the plates.

Q. Make the reply so that we will know what it is.

A. With reference to the riveting, if I am not very much mistaken, we measured the pitch of the rivets. With the aid of a sketch that we had we knew approximately or could figure out approximately the number of rivets driven. In that way we arrived at our results in regard to the labor of riveting.

(Testimony of Lionel Heynemann.)

Q. Having arrived at the number of rivets in the manner you have indicated, how did you fix the number of hours of labor to drive them? What were your units?

A. I don't remember just what units we took.

Q. You don't remember? A. No, sir.

Q. Would they not be standards, Mr. Heynemann?

A. Not necessarily.

Q. How would they vary?

A. They would vary very much according to the position in which rivets are driven.

Q. By that you mean whether they are driven horizontal or vertical?

A. Not alone that, but the conditions under which they are driven. When a man lays on his back and has to hold on, and another man has to drive them on the top in some cramped place, he cannot drive the same number of rivets that he can under other conditions.

Q. Assuming that condition, what is the unit?
[1806—1717] A. There is no unit.

Q. There is no unit?

A. Not to that kind of work, that I know of.

Q. Then, as a matter of fact, in work of that kind, any estimate you make is a pure guess?

A. Not at all.

Q. If it is not show us why it is not.

A. Because a guess partakes of the nature of an hypothesis that is not based on such data as we had before us.

Q. The data that you had before you, if it is at all

(Testimony of Lionel Heynemann.)

reliable, is the suggestion that one man lay on his back and another man is driving down from the top; is that right?

A. That may be one condition. I explain that to show the condition of driving rivets varies very much, and work on ship-board, particularly in the double bottoms, is an entirely different thing from riveting on the shell of a boiler for instance, or on the hull-plates—on the outside of the hull-plates.

Q. We understand that, but in this case, there was riveting done on the tank-top, was there not, and there was riveting done on the stanchion underneath, and on the angle-irons, and there was riveting done in the bottom, was there not? A. Yes, sir.

Q. In every conceivable position in the bottom of that vessel, was there not?

A. I don't know about every conceivable position.

Q. A great variety? A. A great variety.

Q. A great variety of riveting? A. Yes, sir.

Q. What I am asking you for now is the unit or standard that you adopted to determine for any given position of those rivets the time required to drive them?

A. We had no standard. [1807—1718]

Q. No standard whatsoever? A. No, sir.

Q. And nobody could have, could they?

A. Not in the way you put it.

Q. Could they have it in any way?

A. In any way?

Q. Yes. You have made a distinction between the

(Testimony of Lionel Heynemann.)

way I have put it. Presumably you have another way.

A. No, sir. I should say that if the riveting gang would go through a certain amount of riveting in a certain way under certain definite conditions, that then that riveting gang could establish a standard for themselves in the way of repeating that same class of work under the same conditions.

Q. That particular gang? A. Yes, sir.

Q. Is that the only way that a standard could be arrived at?

A. That is the only way that occurs to me just now. I am perfectly at liberty to say I don't know that there is a standard for all work under all conditions.

Q. Then you would not want to undertake to say there is any standard by which anybody could determine the length of time required to do the riveting on that tank-bottom under the varying conditions under which it had to be done?

A. No, sir; I did not say that at all.

Q. Let us have your answer and see what you do contend.

A. You asked me if there was a standard. I said there was not a standard, but when it comes to arriving at results from the data shown, and from what you know of the way that work is conducted one arrives at results.

Q. What do you know about the way that work was conducted, Mr. Heynemann?

A. I know that from experience on the one hand,

(Testimony of Lionel Heynemann.)

and from descriptions of the work on the other hand, and from [1808—1719] seeing the tank-top myself.

Q. That is all you know about how that work is conducted?

A. Yes, sir, I did not see the work done myself.

Q. There might be other conditions attending the doing of that work which you have not considered, might there not?

A. There is always a chance for a man being fallible. I do not put myself up at all as infallible.

Q. By that, then, you mean to concede there might have been conditions attending the doing of that work of which you are not advised?

A. There might have been. I don't believe there was.

Q. Your belief in the matter, of course, does not cut very much figure. When you assume there might have been that is enough. Having passed from the riveting, what was the next element in your calculations arriving at that \$800? You have now the tank-top and the riveting. By the way, part of this riveting—a large proportion of it—was underneath, where you could not see? A. A large proportion was.

Q. And where you could not see the rivet-heads either?

A. I will then have to ask you what you mean by a large proportion? I don't know what you mean by a large proportion. Would that mean over 50 per cent of the riveting?

A. You can put your own construction on it be-

(Testimony of Lionel Heynemann.)

cause you are the one that is testifying. Would there be over 50 per cent of it?

A. I don't think there would be over 50 per cent below.

Q. There would be about 50 per cent?

A. I could not tell you that.

Q. You would not know whether there would be 50 per cent or not?

A. Not unless I studied into it. [1809—1720]

Q. And you never did study into it?

A. I just told you we did. We spent a good deal—I will not say midnight oil but electric light—studying this proposition.

Q. About this question as to how much of the riveting was out of sight?

A. No, sir. If you put it that way I don't think we did.

Q. Whether put in that way or not, the substance of it you did not pay any attention to?

A. I don't know that I fully understand the question.

Q. Read the question to the witness, Mr. Reporter.

(The Reporter reads the question as follows: "Whether put in that way or not, the substance of it you did not pay any attention to?")

A. The substance of what?

Q. As to the amount of riveting that was out of sight. You say I put it in that way?

A. I don't remember that we segregated it in that way.

Q. Or in any way, did you?

(Testimony of Lionel Heynemann.)

A. I don't remember that we did.

Q. Have you any data now to show how many rivets went into that job?

A. No, sir, we have no data whatever with regard to the details.

Q. No data whatever?

A. No, sir, except the data mentioned.

Q. I presume this estimate at page 149, which is missing, had the data for which we are seeking, did it not?

A. Possibly it had. I don't remember that page.

Q. You say you don't remember that page?

A. No, sir. [1810—1721]

Q. It says here it is an estimate of this particular work. A. I saw that. I don't remember it.

Q. You don't remember it at all? A. No, sir.

Q. Now, after we have passed the tank-top and the rivets, what other element went into—when I say the tank-top, I should say, after having passed the surface and the rivets, what other details went into the work on the tank-top that is contained in this estimate of \$800? A. The caulking.

A. The caulking.

Q. The caulking? A. Yes, sir.

Q. What is the caulking on the deck?

A. Caulking of joints.

Q. Caulking of joints? A. Of the plates.

Q. How many hours did you allow for that?

A. I don't remember.

Q. You cannot approximate it? A. No, sir.

Q. Have no detail of it at all? A. No, sir.

(Testimony of Lionel Heynemann.)

Q. If you were given the opportunity quietly, and out of my harassing presence, could you re-establish that? A. What do you mean, re-establish what?

Q. That detail of the number of hours?

A. The detail of the number of hours I could approximately.

Q. You cannot do it approximately now?

A. No, sir.

Q. How long would it take you if you had this quiet time by yourself, to re-establish the detail concerning those hours?

A. I could not tell you how long it would take.

Q. Would it take you longer than a single evening?

A. I think I could do it in a single evening. I think I could. [1811—1722]

Q. Mr. Heynemann, how did you in your figures treat these litening holes as having been cut, whether done while the partition was in the ship or done out of the ship?

A. I don't remember that detail. I don't remember whether he figured the floors as having had the litening holes cut out before or afterwards. I don't remember that detail.

Q. You don't remember that detail? A. No, sir.

Q. Would it make a difference?

A. It certainly would make a big difference.

Q. Make a big difference?

A. I think it would.

Q. How does it happen, Mr. Heynemann, that every detail that I ask for lies so far beyond your memory and on direct examination every detail, in-

(Testimony of Lionel Heynemann.)

cluding the figures which you have given, were so thoroughly in your mind that you answered promptly and quickly as the question was asked you without the necessity of referring to any notes?

Mr. McCLANAHAN.—I object to the counsel attempting to photograph the manner in which Mr. Heynemann answers questions put to him, and I will indulge in a little photographic business myself by disputing the statement made by counsel that he answered promptly and quickly every question, as soon as it was put to him; on the contrary, Mr. Heynemann has shown himself to be very deliberate and slow in making his answers to all questions.

Mr. FRANK.—Q. Now, Mr. Heynemann, with that instruction and intimation on the part of counsel, answer the question.

A. The answer is a very simple one, it seems to me.

Q. Well.

A. I memorized those figures about half an hour before I came into the office here on Saturday morning.

Q. What was your purpose in memorizing them?

A. I memorize [1812—1723] them frequently. Frankly speaking, I don't know what the object is, but Mr. McClanahan, I think, had in his mind that he wanted to show how thoroughly we had gone through this work, and I had in my pocket the same data as, for instance, that marked "Respondent's Exhibit No. 2," and I had opposite these items the numbers all over these schedules, as we call them, the extra bills, or the number of the item of the gen-

(Testimony of Lionel Heynemann.)

eral specification, but Mr. McClanahan thought it best that I should not use it.

Q. So you memorized it?

A. I memorized it, yes.

Q. So as to be able to testify in the manner in which I have indicated?

A. Not exactly. I memorized only the figures of the estimate; but these other matters we speak of, such as the 140, items of the billhead, those I had been through so frequently that they did more or less remain in my mind, so that that is the answer; but in regard to those figures, I had simply memorized them about half an hour before I got into the courtroom; the fact of the matter is, that my memory is not particularly good.

Q. Well, then—I am appreciating that now, Mr. Heynemann—am I to understand that you did nothing with those figures since April 29, 1910?

A. Oh, yes, we did.

Q. What did you do with them?

A. Well, we discussed them in various ways. There was quite a good deal of work that we had not seen at the time we presented the letter to Mr. McClanahan on April 29th.

Q. Yes.

A. That we made only what you might call a rough estimate of. But we afterwards had occasion to see it, such as drydock work, the work on the gudgeons, etc., and we went over our estimate again in the light of what we had seen and we found that there was no

(Testimony of Lionel Heynemann.)

necessity for making any change in our estimate.
[1813—1724]

Q. How recently was that? That was as recently, wasn't it, as less than a month ago—was it not?

A. It was after the vessel went on the drydock; I think that was September 22d of this year.

Q. September 22d or September 12th?

A. I would not be positive, but it was some time in September of this year.

Q. Is that the only time you went over your figures?

A. No. I went over the figures at a variety of times—not over the figures, but over several items, as the different items were illuminated in different ways.

Q. How were they illuminated, Mr. Heynemann?

A. Well, one way that I can recall is that when we met Mr. Klitgaard, whom we had not seen before, and he explained to us smaller items we had overlooked, and in that way we went over various items; but as the net result of the going over our items *pro* and *con*, we could not see that it affected our figures.

Q. In other words, you did not change your figures at all from your figures of April 29, 1910?

A. No.

Q. In any particular? A. No.

Q. Now, on these occasions, however, did you refigure it?

A. We refigured the—no, I can't say that we refigured it, but we either added such items as we had

(Testimony of Lionel Heynemann.)

omitted and subtracted such items as we had put in too much.

Q. Well, now, that was last September.

A. Yes, that was last September.

Q. What items did you add and what items did you subtract last September?

A. I don't know that I could recall that, but I think that I could furnish you with those items.

Q. Well, give me your best recollection now of it; afterwards if you can furnish them, why, they will stand for what they are worth.

A. I remember one item was the water service-pipes. [1814—1725] We understood that after they had been installed that the leads had been changed on some of them.

Q. Well, what did you do with that?

A. We took such items as that and made an addition of them in favor of the United Engineering Works, and then made a deduction of other items that we had added in too much.

Q. Well, do you know how much you added for the water service? A. I don't remember.

Q. Is there anything else you added anything to?

A. Yes, we added—after we saw the vessel on the drydock we added for plates that had been put around the stern which had not been taken into consideration by us originally.

Q. Do you know how much you added for those? That is only a month ago.

A. Yes. That was quite a little amount, quite an amount of them. I would rather not state because

(Testimony of Lionel Heynemann.)

my memory is not clear on the subject.

Q. Anything else that you made additions for?

A. I think there were also some zinc plates around the hub of the propeller that we added for.

Q. How much did you add for that?

A. I don't remember.

Q. Have you the detail?

A. I think in the detail that I could furnish you, I believe, that the sizes of the zinc plate are mentioned, but I would not be positive of that.

Q. Well, is the amount that you added for those also within your possession?

A. I think so, yes.

Q. Now, anything else?

A. Let me see. Yes. I remember that we added for turning off the thrust-shaft in the stuffing-boxes on each end of the thrust-box.

Q. Do you remember the amount you added for that? A. I cannot. [1815—1726]

Q. You did that also at this time?

A. Yes, at the time we met Mr. Klitgaard. I would like to state that we met Mr. Klitgaard, I think, long before the vessel went on the dock, although I would not be positive about that; but these matters that I refer to, with reference to the zinc plates and the plates that went around the stern of the vessel, were only figured in after the vessel went on the dock. But when I say "figured in," I mean to say these details on this itemized list which, I think, I may be able to furnish you, we found that we had to make certain additions, and again found

(Testimony of Lionel Heynemann.)

we had to make certain subtractions, and the net result was, I think, a difference of, I think it was, \$15; so we did not think that we would change our estimate for the \$15. I don't remember whether it was for the United Engineering Works or against it.

Q. Well, now, you have given us that. Let us proceed to the point that we were speaking of at the time you digressed. Is there anything else that you made an addition for?

A. I don't remember just now.

Q. You don't remember? A. No.

Q. Do you remember anything that you made subtractions for? A. I don't recall just now.

Q. Can you furnish those to us to-morrow?

A. To-morrow is a legal holiday.

Mr. McCLANAHAN.—Q. Can't we go on to-morrow with you?

A. Certainly. Yes, I can furnish them to-morrow. That is, I believe I know where they are. I know these estimates were made on loose paper in lead pencil in rather haphazard way, as it will appear, but I think I still have them.

Mr. FRANK.—Q. All right; we will then ask you to produce to-morrow the [1816—1727] details of the additions and the subtractions which you have made to that list. A. Yes.

Q. Now, then, we will go back. We have not finished with the tank-top yet. Did you figure on the plates that have the litening holes on being new plates or being plates already in the ship?

A. That question is contained in another question

(Testimony of Lionel Heynemann.)

that you asked me before. You asked whether I figured on the holes being drilled in place or out of the ship. If the litening holes were made in place, then, of course, they would be in the old plates.

Q. Well, whether that is so or not, which you do not know, did you figure on that?

A. I don't remember whether we figured on them out of the ship or in the ship.

Q. Mr. Heynemann, what angle-irons were used in connection with the tank-top?

A. I don't remember what angle-irons were used. I think very likely they were either $2\frac{1}{4}$ or $2\frac{1}{4}$ inches wide; that is, the leg was $2\frac{1}{2}$ x $2\frac{1}{2}$ by possibly $\frac{5}{16}$ or $\frac{3}{8}$ thick.

Q. Is that what you figured on?

A. I don't remember whether that is what we figured on or not.

Q. You don't remember what you figured on?

A. No.

Q. Do you remember the number of feet of angle-iron you figured on? A. I don't.

Q. Do you remember the position in which you figured these angle-irons were placed? A. Yes.

Q. What were the positions?

A. The positions were both athwartship and up and down.

Q. Where at?

A. On the floors, and on the intercostals.

Q. Now, to make that a little plainer, because I am satisfied that the tribunal that will pass upon this will not quite know what the floor is nor what the

(Testimony of Lionel Heynemann.)

intercostal is— [1817—1728]

A. The floors are the sheets or plates that go athwartship, and the intercostals are the floors or plates that run between the frames in a longitudinal direction.

Q. Well, in other words—

A. The boxing, you might call it to make it plain.

Q. In other words, the plates with the litening holes in run athwartship?

A. They run athwartship.

Q. And the others are ordinary girders running fore and aft, are they not, and that makes the floor?

A. You can put it that way.

Q. Isn't that right? A. Yes.

Q. Now, these are all underneath the tank-top, where you can't see them, are they not? A. Yes.

Q. And the angle-irons run along these intercostals, as they call them, or girders, as they call them, the full length, do they not? A. No, they don't.

Q. Don't they run the full length? A. No.

Q. How far do they run?

A. Well, they don't run the full length.

Q. Read the question.

(The last question repeated by the Reporter.)

A. They sometimes only run between frames, and sometimes they run between half a dozen frames.

Q. Well, in this case you don't know whether they run between single frames or half a dozen frames, do you? A. No, I don't know.

Q. And consequently you don't know the length of the angle-iron either?

(Testimony of Lionel Heynemann.)

A. Yes, we did know the length of the angle-iron.

Q. How did you know?

A. Because it would not be any longer than the tank-top, I know, no matter whether cut off between the frames or extending the entire length. [1818—1729]

Q. Did you allow for angle-iron the full length of the tank-top? A. We certainly did.

Q. There are two angle-irons, are there not, on each one of these intercostals? A. Yes.

Q. When I say two angle-irons, I will amend that; there are four, aren't there?

A. Yes, I think there are two on top and two on the bottom.

Q. Two top and two bottom? A. Yes.

Q. Did you allow for four angle-irons running the full length of the tank-top?

A. I don't remember the details.

Q. You don't remember the details?

A. No.

Q. You don't remember how you figured on those angle-irons?

A. I don't remember the details of the estimate.

Q. No means of reproducing it at the present time?

A. No.

Q. You could, however, reproduce that in the quiet of the evening, I understand.

A. I think I could make a stab at it.

Q. Well, you understand that we are expecting you to stab at this to-night.

Mr. McCLANAHAN.—I object to the witness

(Testimony of Lionel Heynemann.)

making a stab at it, as you call it, unless the United Engineering Works want to pay for the labor involved; we do not propose to pay for it.

Mr. FRANK.—You have the queerest notion of the rights of examination. I do not care whether you do it to-night or when. You can do it now, if you want to, but if you prefer to do it in the quiet of the night I am satisfied you shall do it then, but I shall expect those figures, Mr. Heynemann.

A. I shall act according to the advice of counsel on our side in this matter.

Q. On your side of this matter? A. Yes.
[1819—1730]

Q. Well, what am I to understand by that?

A. I don't know. It seems to me that it is perfectly plain. I do not propose to do any more work than I have to do, when I am not obliged to. I have done enough, particularly in the evening.

Q. Then you decline now to make these figures in the evening?

A. I do not decline; unless my side orders me to do so, I shall not do so.

Q. Well, if your side says nothing about it, then will you do it?

A. I would only go according to the advice of counsel on this side.

Mr. FRANK.—Well, Mr. McClanahan, if the witness is looking to you for advice upon this subject, I will ask you, then, if you offer any objection or interruption to Mr. Heynemann's making those figures to-night?

(Testimony of Lionel Heynemann.)

Mr. McCLANAHAN.—Mr. Frank, as I understand the latter, it will involve a good deal of labor on the part of Mr. Heynemann; he is an expert and is being paid for the labor which he has performed for us in this matter. If Mr. Heynemann is going to render us a bill for work which he is doing as an expert for you, I shall instruct him not to do it on our account. If you want to pay for his expert figuring, why, I have no objection to Mr. Heynemann accommodating you.

Mr. FRANK.—Well, I do not think I am called upon to pay Mr. Heynemann; he is under cross-examination. I am entitled to what I ask for here and now. He tells us, however, that he does not care to make the attempt here and now, because of the disturbing element of our presence, but he could do it in the night-time. I am giving him the privilege of doing it undisturbed, if he desires; [1820—1731] if not, I shall insist upon it being done at the examination. Now, either you or Mr. Heynemann, or both of you, can take your choice.

Q. What is your decision, Mr. Heynemann?

A. I shall act according to the advice of Mr. McClanahan in this matter.

Q. Well, you appreciate the fact that Mr. McClanahan is only concerned, as he states it, with the expense.

Mr. McCLANAHAN.—That is all.

Mr. FRANK.—Q. What is your answer.

A. My answer is that I have worked on this case, and I do not propose to do any work unless I am well paid for it.

(Testimony of Lionel Heynemann.)

Q. Well, we will see what the Court has to say about it, Mr. Heynemann.

Mr. McCLANAHAN.—Very well, Mr. Frank. I am perfectly willing to submit that to the Court.

Mr. FRANK.—Now, Mr. McClanahan, I want to suggest that you had better be prepared to go into Court with me to-morrow upon these questions.

Mr. McCLANAHAN.—I had anticipated you, Mr. Frank, in the matter, and found that the Court was not going to sit to-morrow.

Mr. FRANK.—I shall have to make some inquiry as to when the Court will hear this.

Mr. McCLANAHAN.—Wait a minute. I am mistaken about that. I had anticipated you on this matter of the sketch-book and found that the Court was not going to sit this afternoon. I think the Court will sit in the morning.

Mr. FRANK.—Q. Passing now, Mr. Heyenmann, to No. 2, I notice in your sketch-book the item “cut three holes in bottom of ship to facilitate cleaning No. 4 tank; oil drained out in [1821—1732] dry-dock and hole patched. “Labor for cleaning out No. 4 tank is the item of \$25, on this agreement between Mr. Gardner and H. L., the amount allowed for that No. 3— A. No. 2?

Q. For No. 2? A. Yes.

Q. That includes, does it, the cutting of the hole and also the cleaning out of the tank?

A. No. No. 2 calls for cutting three holes in the bottom of the ship to facilitate the cleaning of No. 4 tank; it does not include the cleaning of the tank.

(Testimony of Lionel Heynemann.)

Q. Then it is \$25 for cutting the hole?

A. Cutting the hole.

Q. What was the diameter of the hole cut?

A. I don't remember.

Q. You don't remember? A. No.

Q. You made that figure of \$25 before you ever saw the hole, did you not? A. Yes, we did.

Q. And you never changed it?

A. Never changed it.

Q. Do you know that the hole was cut twice?

A. Which hole.

Q. That very hole. A. It says cut three holes.

Q. Well, the three of these were each cut twice—did you know that? A. I don't.

Q. Would that made a difference in your estimate?

A. It might make a small difference, yes. It would depend on how much they were enlarged; if they were enlarged only a small amount it would make a very small difference.

Q. Now, you have got labor for cleaning out No. 4 tank; what did you charge for that?

A. I don't remember.

Q. No means of recalling it?

A. I don't see where that item is; that isn't contained in No. 2, is it?

Q. Contained in that sketch.

A. "To facilitate cleaning No. 4 tank." It does not say that the tank was cleaned.

Q. Just read underneath there.

A. "Oil drained out in drydock [1822—1733]

(Testimony of Lionel Heynemann.)

and hole patched.” “Labor for cleaning out No. 4 tank.”

Q. That is what it says, don't it?

A. Yes, but, I believe, I think that that labor appears in another item.

Q. Well, show us the item where that labor appears.

A. May I see the schedules, the list of bills. I believe, Mr. Frank, that that is just a memorandum, that labor of cleaning out No. 4 tank; and does not properly belong to item No. 2.

Q. Very well; explain it to us.

A. It must appear in some other part of the estimate.

Q. Well, indicate where we will find it.

A. I can't find the item just now, and I would prefer to refresh my memory on this matter by looking over these papers, as I do not want to delay the hearing of this case. I feel sure that we figured on very much more than that item for the cleaning of the tank, and as I do not see it in the item No. 2, as that estimate simply refers to the way the item reads, cutting “three holes in bottom of ship to facilitate cleaning of No. 4 tank.”

Q. Go on and take your time. I do not want to leave the subject, or I will probably forget it.

A. With reference to the labor, I am very well convinced that it appears somewhere else.

Q. Just hunt it up, then. Would this help you out any, your items?

A. No, I don't think so. I don't think it would.

(Testimony of Lionel Heynemann.)

I do not find the item, but it is firmly fixed in my mind that we figured for the cleaning of the tank a greater item than that would indicate.

Q. This \$25? A. Yes.

Q. You do not find it, however, anywhere in the itemized statement making up agreement between Mr. Gardner and L. H.? A. I don't.

Q. Then you don't know whether you made any allowance for it [1823—1734] or not?

A. I don't know that we made any greater allowance, but I have it fixed in my mind that we did; firmly impressed in my mind that we have made a greater allowance than that would indicate.

Q. Well, if you did, it must be in one of the items?

A. I don't find it.

Q. Well, does not the fact that you don't find it convince you you did not make any allowance for it?

A. It does not, because, while I don't find it amongst these items, it still may be there.

Q. It still may be in what items?

A. It may be in some of these items that I have not observed in running over it.

Q. It is a very easy matter to go over.

A. I have gone over it; and I do not find it.

Q. It is not there, is it?

A. I would not be positive about that.

Q. When you say you have gone over these items, you mean you have gone over Respondent Kinsman's Exhibit No. 2; is that right? A. Yes.

Q. And it does not appear there?

A. It does not appear, so far as I can see, just now.

(Testimony of Lionel Heynemann.)

Q. And if it does not appear there it certainly does not appear in the figures which you have presented of the agreement between Mr. Gardner and L. H.?

A. I would not say that it does not appear in the figures; we might have only allowed that much.

Q. You might only have allowed \$25?

A. Yes, for the full item.

Q. Then, if it appears there at all it appears in that \$25; is that right? A. Not necessarily.

Q. Well, let us get down to something that is definite, Mr. Heynemann, [1824—1735] as to what you would want us to understand. You say you might have allowed it in that \$25, but you say not necessarily; now, if you did not, where did you allow it?

A. I could not tell you. I could not tell you whether we made any more allowance for it than is contained in that.

Q. \$25? A. In that \$25.

Q. Now, do you know what the nature of that work was, Mr. Heynemann?

A. The cleaning of the tank?

Q. Yes. A. Yes, I think so.

Q. What was it? A. Steaming it out—

Q. Well.

A. Steaming it out and getting all the grease out.

Q. Is that all?

A. That is the nature of the work, yes.

Q. When you say steaming it out and getting all the grease out, you are assuming that the oil itself would run out of the hole, are you not?

(Testimony of Lionel Heynemann.)

A. No; it would have to be assisted.

Q. In what way? A. By men.

Q. In what way?

A. By men opening up the manholes and assisting it with swabs.

Q. That is all that you have in mind?

A. That is all I have in mind just now.

Q. Do you remember how many hours were allowed for that labor? A. I do not.

Q. That is assuming it is contained in that \$25?

A. Yes.

Q. How many hours of labor would \$25 produce?

A. I think we only figured 40 cents an hour for that class.

Q. For that class of labor? A. Yes.

Q. 40 cents a hour for what length of a day?

A. We figured 40 cents an hour.

Q. 40 cents a day, irrespective of the length of the day? [1825—1736] A. Yes, sir.

Q. Well, did you make any allowance in the number of hours so as to make that 40 cents the equivalent of a ten hour day?

A. I do not know that I understand your question.

Q. Don't you know that the real rate for men at that time was at the rate of \$4 a day, for an 8½ hour day? A. You mean that they were paid \$4?

Q. I mean that was the going rate in this port charged by all iron works for labor of that class.

Mr. McCLANAHAN.—What class?

Mr. FRANK.—Ordinary labor.

Q. Isn't that so, Mr. Heynemann?

(Testimony of Lionel Heynemann.)

A. We figured on an hour basis.

Q. You figured on an hour basis?

A. At shop rates.

Q. What? A. I say at shop rates.

Q. What do you call shop rates?

A. The rates marked on your billhead.

Q. And you made no allowance in time then for the difference between those rates and the prevailing rates in this port for an 8½ day?

A. We made an allowance of \$2,000.

Q. No. You are not talking about the same question. You told us this morning that that \$2,000 was for overtime. A. Yes, sir.

Q. That is a very different thing from what I am talking about.

A. It is what we had in mind that that \$2,000 would cover.

Q. Would cover what?

A. Cover the difference between, first of all, the straight overtime and also the difference in the number of hours that the men worked and the time that you charged.

Q. I do not get that very clearly, Mr. Heynemann.
[1826—1737]

A. Suppose that a man worked 8½ hours on a day and you charged for 10, or for 9, as the case might be, you would be charging for more hours than the men actually worked.

Q. Yes, but at a less rate than the going rate.

A. How do you mean?

Q. 40 cents an hour was not the going rate.

(Testimony of Lionel Heynemann.)

A. He was not paid any 40 cents an hour; the laborer was not paid any 40 cents an hour.

Q. That has nothing to do with it; 40 cents an hour was not the going rate charged by people in that business for that work? A. Yes, sir.

Q. What do you say "yes" for? I say it was not.

A. Well, I say it was.

Q. That is your position; that is the position that you take.

A. That 40 cents an hour was the going rate for that class of work per hour.

Q. That is for an 8½ hour day?

A. Only per hour; you will find your own billheads made out per hour.

Q. Yes.

A. And you will find the rate is 40 cents an hour on that class.

Q. Is that the basis of your statement that was the going rate for that class of labor? A. Yes.

Q. That is the basis of it? A. Yes.

Q. Very well. Now, with that understanding, let us get back to your \$2,000. What does that represent, while we are at that, and then we will go back to the other matter again.

A. That represents the overtime which was an arbitrary amount that we took for granted, and also the difference between the hours actually worked and the hours you charged for. [1827—1738]

Q. Now, that we may understand each other, when you say the hours that we charged for, you mean by that the ten hour day or the nine hour day, as it hap-

(Testimony of Lionel Heynemann.)

pened to be?

A. The nine hour day, of course. I might say this that we had nothing to do with the arrangement that the United Engineering Works had with the men; all we were asked to do was to make an estimate, a fair estimate, on the value of this work, and we estimated that per hour, that amount of work per hour.

Q. But in estimating it per hour, you consider the fair value to be the number of hours multiplied into the going rate per hour, would you not?

A. Yes, sir.

Q. And the 40 cents was not the going rate per hour?

A. Well, I think that 40 cents was the going rate for that class of work.

Q. You state so, because you say you saw it on our billheads. A. Yes, sir.

Q. That is your only authority for saying so?

A. Yes, sir.

Q. I think we understand each other now. I will come back to the \$3,000 later, Mr. Heynemann. Now, it is five minutes after 4; do I understand now, Mr. Heynemann, that you will or will not produce the additions and subtractions which you have been testifying to, the detail of the additions and subtractions which you say you have, and which were made on the original estimate, to-morrow morning?

A. The changes on the original estimate?

Q. Yes.

A. I think I have that data on several papers on which those changes were enumerated, and if I have

(Testimony of Lionel Heynemann.)

you will have them.

Q. And you decline to figure on the tank-top so as to give us the detail by which you arrived at the \$800 to-morrow morning?

A. I shall act on the suggestions of counsel on this side in that [1828—1739] matter.

Q. I understand that your declining, then, is not based upon personal inconvenience, but is based upon a desire to meet the wishes of counsel on that side; is that right?

A. It is, as you may easily imagine, not very convenient to continue to work at a matter of this kind after you put so much work in it; the same reasoning that you apply to item No. 1 you can apply to the 140 items, and I can tell you I do not propose to sit home at night figuring over these 140 items.

Q. In other words, you don't propose, Mr. Heynemann, to give us the detail for the alleged sums that you have offered here and sworn to?

A. Unless I was very well paid for it.

Q. Unless you are very well paid for it.

A. Yes.

Q. You do not understand, then, that you have offered yourself here as a witness on this subject to our right to get the information of the detail which forms the judgment which you have given?

A. I have given you as much of the detail as I think is necessary in this particular instance.

Q. You have not given us the detail which is necessary to form any judgment of the correctness or incorrectness of your figures? A. I think I have.

(Testimony of Lionel Heynemann.)

Q. Well, we differ in that respect. A. Yes.

Q. You decline to furnish us any further detail?

A. I did not say I do decline. I will furnish you with as much detail as I can now remember, and if you are to ask any more questions about it I will be perfectly willing to answer them.

Q. I will sit down and ask you the question again necessary to get that detail to-morrow morning.

A. As far as I can remember. [1829—1740]

Q. Unless you provide me with the detail in the manner which I have indicated.

A. I will give you the best of my recollection and belief on all the items, but I do not propose to stay at home and work over 140 items.

Mr. FRANK.—I suggest, Mr. McClanahan, that you meet me in court to-morrow morning at 10 o'clock, and we will see at what time the Judge will hear us upon this subject.

Mr. McCLANAHAN.—Have you communicated with the Court?

Mr. FRANK.—He has a matter set for to-morrow morning for hearing, and I guess we would not be very likely to be able to get a hearing until that matter is disposed of. I will take this paper with me.

Mr. McCLANAHAN.—No, you can't.

Mr. FRANK.—Why can't we?

Mr. McCLANAHAN.—You introduce them in evidence and you can take them; otherwise, not. I told you this morning you could have them for one hour.

Mr. FRANK.—Do not talk to me like that; talk in a different tone from that. You will get into trouble

the first thing you know if you don't stop that.

Mr. McCLANAHAN.—I am prepared to get in trouble.

Mr. FRANK.—You are liable to get in trouble if you keep on like that.

Mr. McCLANAHAN.—I am prepared to get into trouble any time you want to.

Mr. FRANK.—You will get into trouble. Do not talk to me in that tone of yours.

Mr. McCLANAHAN.—I will do as I please.

Mr. FRANK.—You will get something with this yet if you don't [1830—1741] stop that. This thing can be carried on properly.

Mr. McCLANAHAN.—It will be carried on properly.

Mr. FRANK.—This thing can be carried on properly, but you are not controlling this, or any other examination to suit yourself.

Mr. McCLANAHAN.—Please give me that paper.

Mr. FRANK.—I want that.

Mr. McCLANAHAN.—You will not have it.

Mr. FRANK.—Why not have it?

Mr. McCLANAHAN.—Because I have got it.

Mr. FRANK.—You turn it over to me.

Mr. McCLANAHAN.—I shall not turn it over to you; you are not going to have them, Mr. Frank.

Mr. FRANK.—Very well. Make a note of that, Mr. Reporter. We will see whether I will have that paper or not.

Mr. McCLANAHAN.—I do not know how the notes are going to get it.

Mr. FRANK.—We have a perfect right to examine

the witness on it.

Mr. McCLANAHAN.—You certainly have, and you have been doing so. You introduce it in evidence and I will grant you the usual favor that we have been granting to each other of taking them.

Mr. FRANK.—Well, I would like to learn from you wherein your rights are affected unfavorably by my examining the paper, whether introduced in evidence or not introduced in evidence.

Mr. McCLANAHAN.—No need of encumbering the record with any further discussion, Mr. Frank; you cannot have this paper.

Mr. FRANK.—Very well, Mr. McClanahan.

Mr. McCLANAHAN.—I will produce it when we proceed with our hearing to-morrow and not before.
[1831—1742]

Mr. FRANK.—Very well. I will take the rest of these. You take forcible possession of just so much of the record as you see fit.

Mr. McCLANAHAN.—I am not taking forcible possession of any of the record.

Mr. FRANK.—You are; you are taking it away from me now.

Mr. McCLANAHAN.—I say, you make it a part of the record and you can have it.

Mr. FRANK.—When the proper time comes. I will exercise my discretion about introducing it.

Mr. McCLANAHAN.—You cannot take it unless you do.

Mr. FRANK.—All right. That is another letter there that is not in the record. Where is the original of that?

Mr. McCLANAHAN.—That is not in the record. I have no objection to your seeing that, if you want to.

Mr. FRANK.—Are you withdrawing that now?

Mr. McCLANAHAN.—You seemed disinclined to take it. I did not want to let it lay around loose; you are gathering up all the exhibits.

Mr. FRANK.—I am gathering up everything that I can lay my hands on, and you are gathering up everything you can to prevent me from getting it.

Mr. McCLANAHAN.—Oh, no. I am not gathering up the exhibits at all.

Mr. FRANK.—I am gathering up the record for examination, which I think you will concede I have a perfect right to do.

Mr. McCLANAHAN.—Sure.

(Thereupon adjournment was taken until Tuesday, November 7th, 1911, at an hour to be set at 10 A. M.) [1832—1743]

Tuesday, November 7th, 1911.

Before Judge J. J. DE HAVEN.

Mr. FRANK.—If your Honor please, in the matter of the testimony that is being taken in the case of the Matson Navigation Company, there are some questions as to the admission of evidence or questions of evidence to be passed upon. We should like to have the Court fix some time when your Honor can hear us. Mr. McClanahan was to be here this morning, but I do not see him.

The COURT.—What is it?

Mr. FRANK.—There are some questions relating

to a witness answering to be passed upon. Here is Mr. McClanahan.

The COURT.—Do you propose to argue the question of the admissibility of the testimony?

Mr. FRANK.—We propose to ask your Honor's ruling on some questions that have arisen in the course of the testimony—one in particular.

The COURT.—I dislike to decide a case in that way.

Mr. FRANK.—A witness refuses to answer certain questions. That is one of the questions that we wish to submit to your Honor.

The COURT.—I will hear it. Unless the questions are wholly irrelevant, so that I can see instantly that they are irrelevant and impertinent, I shall direct the witness to answer. On these hearings I cannot have the parties running up here every day to have me rule on isolated questions.

Mr. FRANK.—Whatever your Honor suggests about it, I shall be glad to do.

The COURT.—Unless it is something that is wholly immaterial and irrelevant, the proper thing to do is for the witness to answer the question, and then the materiality of it, and what [1833—1744] effect it has, will be determined by the Court when the Court comes to consider the whole case.

Mr. FRANK.—How shall we present the matter to your Honor?

The COURT.—If the witness understands, and counsel understands, that that is the attitude of the Court, it will not be necessary to have any order. If not, I will take it right up now and make the order,

whatever it may be.

Mr. FRANK.—What do you wish to do about it, Mr. McClanahan?

Mr. McCLANAHAN.—I am here unwillingly, if your Honor please. I have not any request to ask of the Court. I want to proceed with the hearing, not this hearing but the hearing under the reference. Mr. Frank suggested that I come here this morning, and I am here. I have no request to make of your Honor.

Mr. FRANK.—I desire to get the ruling on the matter, if your Honor please, and desire to present it. If the Court will hear it now, I will be pleased.

The COURT.—I will hear it.

Mr. FRANK.—The particular question to which I have just referred is the question of an expert who has been placed on the stand to testify with regard to the value of certain work. That work is segregated into items, and he has placed a value opposite these items. The items themselves are mere statements of certain things that have been done to the vessel. When I asked the witness for the details, how he had made up these particular figures, he answered me at first that it would be difficult for him to do that in my presence, because he said that it would be a disturbing influence, that he might make mistakes in addition and multiplication or matters of that sort, and he declined to do it. I then asked him if he could suggest any method by which he could do it. He said if he were alone, quietly, by himself, [1834—1745] he could do it. I then asked him to do it alone, quietly, and by himself, last night, and

bring it in this morning, so that we could get at the details by which he arrived at those figures. Under instruction of counsel he declined to do it, the reason being given, as the record appears, that it was an unreasonable thing to ask of the witness, and also that the defendant was paying the witness for his services and if we required any such things of him that we should pay him for whatever he did in that regard. I think that is a fair résumé of the matter.

The COURT.—That is the statement of the case? What particular page of the record is it on? Have you the record there?

Mr. FRANK.—Yes, I have the record here. It occurs in several instances through the record. Here is one instance on page 1706:

“Q. Now, Mr. Heynemann, I will again have to ask you to give me some of the details that made up that \$800 which you say you allowed for these tank-tops, and for that purpose that you may take the data that you then had before you, and use it.

“Mr. McCLANAHAN.—I object to that upon the ground that it is asking something unreasonable of the witness, and on the ground that the witness has already given his reasons for refusing to answer it, and this is simply encumbering the record.”

After some argument he says:

“A. In answering that I will state that it would be so difficult for me to do it that I do not propose to do it.

“Q. You do not propose to do it? A. No, sir.

“Q. Let me ask you, Mr. Heynemann, that item refers to the tank-tops, does it not?

“A. Yes, sir. [1835—1746]

“Q. In making up that estimate how many lbs. of iron did you allow for?”

Then I go into the details, asking certain questions.

Mr. McCLANAHAN.—All of which are answered.

Mr. FRANK.—Yes, but they are not the questions to which we are referring. I come back to that. I asked him:

“Q. Taking those measurements now, kindly figure out how many lbs. of iron there were on that surface shown by those measurements.

“A. I can give you that this way, that this material, as near as I can remember, was a quarter inch material and that weighed 11 lbs. to the foot as far as the surface is concerned. These plates are all more or less what are called sketch plates. They are not full plates. This sketch does not represent the actual condition that would be necessary to take into account when you figure on a proposition of this kind. You would have to take a plate and allow for a considerable waste before you could figure on it. This sketch represents a mere skeleton. For me to undertake to figure on a proposition of that kind before you would simply mean that I would be making one mistake after the other, because while that appears to be complete to you it is not complete.

“Q. Very well. That is the data you had before you when you make the original figures?

“A. Yes, sir.

“Q. Why cannot you make the same allowances you did before in order to make the complete figure that you did before?

“A. I could, but as I have already stated I don’t think it right to ask it, therefore I refuse to do it.

“Mr. FRANK.—I think we had better adjourn this meeting until I can get a ruling of the Court upon this subject. I am going to find out whether or not on cross-examination I [1836—1747] have a right to the details by which these amounts are arrived at.

“Mr. McCLANAHAN.—You shall not adjourn this hearing with my consent. If you do it will be as far as you leave the room and prevent the hearing from going on. We shall proceed with this hearing if I have got anything to say about it. You will have to leave the room and stop the hearing in that way.

“Mr. FRANK.—I am sure I do not understand, Mr. McClanahan, the lordly manner in which you are treating this matter. The law provides for certain things which I am entitled to, and I do not like your manner one bit. There are also other ways of stating them different from what you have stated,” etc.

The discussion runs along and I return to my question:

“Q. Do you refuse to make any calculation on that subject at all at this time?

“I have several times made calculations in open court, and I have seen other engineers do the same thing, and their mind is not arranged, or so arranged that they can discard the fact that they are being watched and observed, and there is somebody on top of them to see and watch the results that accrue from their work; and it confuses the engineer and is very liable to cause mistakes.

“Q. Is this, then, so delicate an operation, Mr. Heynemann, that the mere fact that somebody is present would cause you to make a material error in your calculations?

“A. It might, not because it is at all a delicate matter but I think I can explain it best in this way. Supposing I were to arrive at a result that there are contained in the surface shown here approximately 22 times 8. That would be a certain amount of square feet. Multiply that by 11 lbs. That is not a delicate operation at all. But I might make a mistake in [1837—1748] multiplying common figures.

“Q. That is all you fear?

“A. That is all that I fear.

“Q. That could very easily be corrected at the time?

“A. It could not, Mr. Frank, because one operation succeeds the other, and the final result I might arrive at might be wrong for the reason I may have made some mistake.

“Q. Mistake in multiplication?

“A. Either in multiplication or addition, some of the elementary processes necessary to arrive at this estimate.

“Q. Is that the nature of all the difficulty in the way of making a calculation here and in our presence? A. No, sir, that is not the only one.

“Q. What is the other?

“A. Another difficulty is to get the thing clearly in your mind.”

The COURT.—The upshot of it is, he refused to answer?

Mr. FRANK.—He refused to answer, and under instructions of counsel.

The COURT.—What is the answer to this?

Mr. McCLANAHAN.—I do not understand that Mr. Frank claims that he has refused to answer anything.

The COURT.—I think he has from this.

Mr. McCLANAHAN.—What question has been asked that he refused to answer?

The COURT.—He says he cannot do it.

Mr. McCLANAHAN.—That is the point.

The COURT.—He cannot do it there.

Mr. McCLANAHAN.—The point is this, if your Honor please: The witness has not refused to answer any question put to him. He has been asked to do the work as an expert, at night if necessary, that he was employed to do first originally by the [1838—1749] respondent in this case, for which he is under engagement, which he has done, and which he has presented as the result of his work in court on the direct examination. He is asked to do that work all over again. He has stated that it involves a great deal of labor; that he has lost his original notes. He has produced the sketches which have not been introduced in evidence, but they show the difficulty that must attend the refiguring of all this evidence in the matter of weights, measures, etc. He has been asked practically to do the whole thing over again. Mr. Heynemann simply says he does not propose to expend any more time in working these problems out unless he is paid for it.

The COURT.—Your proposition then is that he can.

Mr. McCLANAHAN.—Let me read to your Honor the evidence that has not been read: “You decline to figure on the tank-top so as to give us the detail by which you arrived at the \$800 to-morrow morning?”

“A. I shall act on the suggestion of counsel on this side in that matter.”

When Mr. Heynemann made that statement he referred to his pay. If I had said “Yes; do that work for counsel,” he would hold my client responsible and I should have to pay it.

“Q. I understand that your declining then is not based upon personal inconvenience but is based upon a desire to meet the wishes of counsel on that side; is that right?”

“A. It is, as you may easily imagine, not very convenient to continue to work at a matter of this kind after you put so much work in it; the same reasoning that you apply to item No. 1”—

This dispute arose over one of 140 items, one of 140 items on which Mr. Heynemann as an expert has figured. Mr. Heynemann says: [1839—1750]

“It is, as you may easily imagine, not very convenient to continue to work at a matter of this kind after you put so much work in it; the same reasoning that you apply to item No. 1 you can apply to the 140 items, and I can tell you I do not propose to sit home at night figuring over these 140 items.

“Q. In other words, you do not propose, Mr. Heynemann, to give us the detail for the alleged

sums that you have offered here and sworn to?

“A. Unless I was very well paid for it.

“Q. Unless you are very well paid for it?

“A. Yes.

“Q. You do not understand, then, that you have offered yourself here as a witness on this subject to our right to get the information of the detail which forms the judgment which you have given?

“A. I have given you as much of the detail as I think is necessary in this particular instance.

“Q. You have not given us the detail which is necessary to form any judgment of the correctness or incorrectness of your figures?

“A. I think I have.

“Q. Well, we differ in that respect. A. Yes.

“Q. You decline to furnish us any further detail?

“A. I did not say I do decline, I will furnish you with as much detail as I can now remember, and if you are to ask any more questions about it I will be perfectly willing to answer them.

“Q. I will sit down and ask you the question again necessary to get that detail to-morrow morning.

“A. As far as I can remember.

“Q. Unless you provide me with the detail in the manner which I have indicated.

“A. I will give you the best of my recollection and belief on all the items, but I do not propose to stay at home and work over 140 items.” [1840—1751]

If the Court please, this raises a question of law as to whether the Court has a right or the counsel has a right to ask what we claim to be an unreasonable performance on the part of this witness. Ac-

knowledging he is an expert under our pay; he did this work, I think, in April, 1910. It was work which was done after a great deal of examination of the machinery of the ship, of taking the measurements, the computation of weights, and the computation of time necessary to do the work. Elaborate sketches were made of the items of machinery at the time, and an estimate was arrived at in this way. There were two experts in the case—Mr. Heynemann and Mr. Gardner. The evidence shows that after they inspected this work together on several occasions, consuming hours of time, they retired to Mr. Gardner's office at night and would do their figuring separately, Mr. Heynemann taking item No. 1 and placing his figures on it after his compilation, and Mr. Gardner doing the same thing. Then they would compare and, as Mr. Heynemann said, "We would try and convince each other that our figures were right"; and they would finally arrive at a compromise figure and that compromise figure they would put down opposite the item shown to be item No. 1, \$800. The other memoranda that were used in arriving at the results, the weights, the measurements made, the labor that each had allowed for the work, had been destroyed. Naturally, as Mr. Heynemann says, that was all done on loose sheets of paper. The net result is this: The sketches and the measurements are there. Every one of these 140 items has opposite the result of this man's work made under those conditions. He is asked now to sit down after this lapse of time and refigure that work out. I do not believe he can do it, but that is what he is asked to do. Mr. Heyne-

mann's reason [1841—1752] for not doing it is that he should be paid for a thing of that kind. We contend that is a matter of law that is well settled. He has not declined to answer any question, as your Honor sees. He simply declines to perform labor as an expert without pay. I admit that the rule of law is that an expert may be compelled to give testimony without pay.

The COURT.—Let me understand that. You say he gives each item; for instance, he says 100 pounds of nails.

Mr. McCLANAHAN.—Let me illustrate, if your Honor please. The items are taken from the bill-head that is sued on by the libelant; for instance, Item No. 1 on the billhead reads: "Renewed No. 4 tank-top and secured fore and aft angle irons under same." That is Item No. 1 as sued on, a test of the libel. We have taken that billhead and figured it into 140 separate distinct matters of work. We call that the "140 list." It is really the billhead of the libelant that is sued on, so when he says "Item No. 1; \$800," Mr. Heynemann means that is his estimate of what it would take to renew No. 4 tank-top and secure angle-irons under the same.

The COURT.—He has set out in his answer that that is made up of so many pounds of iron and so much putty used, and so many hours of labor, and so on, and he sets all that up.

Mr. McCLANAHAN.—That is what he is asked to go back and refresh his mind on. How can he do it without his notes? He has destroyed them.

The COURT.—Your proposition is you have a

right to put him on and let him say that this item made up of 140 different items amounts to \$800, and that the other side are not permitted to ask him how he reaches that? [1842—1753]

Mr. McCLANAHAN.—They have asked it in detail how he reaches that. He said, “I figure in the material, I figure in the calking, and I figure in the necessary drilling and all that; but,” he says, “I cannot remember the weight of those things.”

The COURT.—Does he say he figures in four pounds of calking?

Mr. McCLANAHAN.—No pounds are figured in. He cannot remember the pounds.

The COURT.—He cannot remember it?

Mr. McCLANAHAN.—No.

The COURT.—How in the world are they going to find out if his \$800 estimate is right if they cannot find out what he took into consideration?

Mr. McCLANAHAN.—He simply gives his opinion as to whether it was right or not. They know the work that was done. They are entitled to bring experts to rebut that testimony. They know what the work was. They did it. Mr. Heynemann did not do the work, but simply saw it after it was done. He is giving his estimate, and the memorandum of it was made a long time ago and has been destroyed. This is cross-examination, I admit. Mr. Heynemann came in and said on direct examination he figured on this 140 list. He figured on all the work, and he told on direct examination how he examined the work, his means of knowledge of the work itself, how it was done, and what was done. Then I asked him

what was the value of that work. They have sued us on the whole bill. I had a right to ask the expert the value of that work. He gave a lump sum. On cross-examination he was asked to produce the sketch-book and this little item showing the itemization, which are not in evidence, as is the only remaining data on which the compilation [1843—1754] is made. All he has is this. He has been asked to produce it and he has done it. It is clear, if the Court will bear with me, counsel has no right to ask of this expert to go to this additional labor. He is willing to give him all the information by way of testimony that he can remember about the matter. He has not declined to do so, and has done so so far as he can, but when he asked him to do labor as an expert, he must pay the witness. That is the rule clearly established by the Federal courts. The case of the Northern Pacific vs. Keyes is a case in point, where the Attorney-General called for certain cables which required the inspection of the waybills of a concern running over four years.

The COURT.—That is a matter that can be regulated as to who shall pay for this on the final argument.

Mr. McCLANAHAN.—That is not the only point. I do not want your Honor to require this man to do something he may not be able to do and which will prolong this trial. Mr. Heynemann was days performing this work.

The COURT.—I really do not know how this case is being tried. It is difficult for me to conceive how in a suit on an account that you cannot put in all the

testimony that has any bearing on it in two days at the outside, I should say. I do not know how minute this is going to be.

Mr. McCLANAHAN.—I am particularly anxious to close this case, because my time limit of ten days expired yesterday. I am here to ask for more time, and in doing so I want to ask for two hours in which to put in my direct evidence. Two hours is all I want. But how long is Mr. Frank's cross-examination going to be? I want to suggest to your Honor that you limit [1844—1755] the cross-examination.

The COURT.—I cannot do that. I do not know but what the easiest way is for me to hear the case. I know I could try this case in less than three months.

Mr. McCLANAHAN.—Your Honor could do it in less than a week. I am willing to have the submission set aside and brought before your Honor.

Mr. FRANK.—That all sounds very well, if your Honor please. As your Honor says, you are not acquainted with the manner in which this case has proceeded. This suggestion of counsel is a very easy thing when he has taken and built up a case with experts; for us to get at it in a few moments is almost impossible. Here is an expert who has absolutely refused to answer the questions asked of him. He says he has not refused to give the information asked. He says it is a mere matter of multiplication and addition.

The COURT.—I do not care about hearing any further argument. I am satisfied that the counsel

is entitled to have those questions answered. If it becomes necessary for him to take out his pencil and figure what 8 times 22 will be and give his answer 166, he must do it that way.

Mr. McCLANAHAN.—That involves doing 140 items.

The COURT.—Let him do it. When I come to consider this case if I find that that was wholly unnecessary, why then the party who brings that cross-examination out will have to pay the expert. I cannot sit here and determine offhand just how far this cross-examination should proceed. I cannot do it. So far as I can see, there is nothing impertinent in the question, if the man can do it, and if it entails any unnecessary expense, as a matter of course I can regulate that in the end. [1845—1756]

Mr. McCLANAHAN.—I spoke of the time limit having expired.

Mr. FRANK.—You need not trouble yourself about that. I am not going to insist upon it.

Mr. McCLANAHAN.—I want to trouble myself about it.

Mr. FRANK.—Very well.

Mr. McCLANAHAN.—If counsel will permit me, I want to make the suggestion to the Court that I be limited to hours instead of days in the matter of putting in my direct testimony, and that counsel be limited to hours instead of days in the matter of cross-examination. I do not see where this case is going to land us. It is a veritable Marathon. There are 1750 pages of record so far. I do not want to put myself in the position where I have overstepped

the order of this Court. I think the record will show that part of my time was used by counsel improperly; for instance, on two occasions in my case counsel deliberately adjourned the hearing in order to inspect such documents as had been introduced. On one occasion, I think, for three hours, and on another one hour.

The COURT.—I shall not make any order limiting the cross-examination. You can have what time you think you desire to put in your direct testimony. If there does not seem to be any need of cross-examination, and if it goes on very long, I will entertain a motion to check it in some way. I do not myself think there is any necessity for taking 1700 pages of testimony in a case of this kind. I do not have any idea what it is, but in a simple suit on an account for work and labor I do not think there is any necessity for it. I shall not make any ruling at this time any further. What time do you desire?

Mr. McCLANAHAN.—I have not the slightest idea. I simply know how long it will take me to put in my direct testimony. [1846—1757] When I can put on my last witness, who is Mr. Gardner, I do not know. I anticipate that if this witness, Mr. Heynemann, is required to go into the thousand and one details on that 140 item list, it will take three weeks before I will be able to put on Mr. Gardner; then he will be asked to do the same thing, and where are we? I am at sea.

The COURT.—Do you desire three weeks time to put in your testimony?

Mr. McCLANAHAN.—I do not desire any un-

necessary time. I say I cannot tell how long it will be. It seems to me we had better leave it open without making any order.

The COURT.—I will make an order. When does your time expire?

Mr. McCLANAHAN.—It expired yesterday at noon and I have one more witness.

The COURT.—I will give you ten days within which to put in your testimony, and I will give the libelant ten days within which to cross-examine.

Mr. McCLANAHAN.—That will make twenty days.

The COURT.—You can take it if you want to.

Mr. McCLANAHAN.—I understand that your Honor's order about the rebuttal remains the same, that the libelant has five days in which to put in his rebuttal testimony. That will make twenty-five days in which to close the case.

The COURT.—He ought to be able to get in his cross-examination in the same length of time that you put in your direct examination. If you only take four days to put in your direct, then he ought only to take four days.

Mr. McCLANAHAN.—I will take only two hours if I get a chance to put on Mr. Gardner. [1847—1758]

The COURT.—In that view, how many days do you think it will take you to cross-examine, Mr. Frank?

Mr. FRANK.—I am not able to fix any time for cross-examination. That depends entirely on the exigencies that may arise. These witnesses that he

puts on are experts that he has been taking months to prepare. As he himself says, the details are enormous. I am entitled to sufficient time to find out from them whether willingly or unwillingly—because my difficulty has been great in getting anything from them so far—on what basis they arrive at their conclusions. I think I can fairly say to your Honor that I will take no unnecessary time. I never have in cross-examination, with all due respect to counsel. His cross-examination on my part of the case, I think, will far exceed any cross-examination that I have made. Of course, if I am exceeding the time that is right or proper, I am always willing to submit the matter to your Honor, but I think it can fairly be left to me. This whole talk about time I am sure I cannot perceive the purpose of.

The COURT.—Very well. You will have ten days in which to finish your testimony, Mr. McClanahan, and Mr. Frank will have ten days in which to cross-examine the witnesses, and take the time for rebuttal. If you cannot get at the testimony in those limits, I will have to make some other order in the case. [1848—1759]

AFTERNOON SESSION.

[**Testimony of Lionel Heynemann, for Respondent
(Recalled—Cross-examination).]**

LIONEL HEYNEMANN, cross-examination resumed:

Mr. FRANK.—Q. Mr. Heynemann, you were in court this morning, weren't you? A. Yes, sir.

Q. Since the adjournment have you conferred with Mr. Gardner regarding the details that you have

(Testimony of Lionel Heynemann.)

been asked for? A. I have.

Q. Are you ready to produce them?

A. Do you mean to produce them now?

Q. Yes.

A. No, sir, it is an impossibility; I have not got them.

Q. You did nothing on them last night?

A. No, sir.

Q. What is it that you propose with respect to them?

Mr. McCLANAHAN.—I object to that question.

Mr. FRANK.—The question is asked so as to give the witness the opportunity of suggesting some mode best known to himself so that the end can be accomplished.

Mr. McCLANAHAN.—What end, Mr. Frank? What do you want?

Mr. FRANK.—I want him to give me the details that I asked for last night.

Mr. McCLANAHAN.—Of item 1?

Mr. FRANK.—Yes, at present.

Mr. McCLANAHAN.—Let us have an understanding, you and I. If Mr. Heynemann is going to be asked to figure this entire list over again, let us have that understanding. If he is going to be asked simply the one item, that is an entirely different matter and we ought to know. Let us have an understanding as to what you want. Are you going to ask him for each item? [1849—1762]

Mr. FRANK.—Whether or not I will ask him for each item will depend on the answers I get to the

(Testimony of Lionel Heynemann.)

questions as I go along.

Mr. McCLANAHAN.—Then the Lord help your 10 days for cross-examination! I think the matter can be clearly covered by telling him what you want and letting him get to work on it. To have a recess for the figuring of one item and come back, and a recess for the figuring of another item will take considerable time.

Mr. FRANK.—Q. Is it necessary that we should have a recess for the figuring, for instance, of the first item, Mr. Heynemann?

A. I don't know Mr. Frank, whether you fully appreciate the difficulty of making these figures over again. I think that your examination of me yesterday showed you how difficult it is to recall the items that made up the cost of that particular item. You asked me, for instance, about the different stages of the work. I forgot entirely to mention that we had also figured on the testing of the tank. Another thing I forgot was that we had figured on the cleaning of the tank in that item. I imagined I knew that we had figured on it. I had it firmly fixed in my mind, but I thought that it was a separate item in either the schedules or in some part of the general specifications, and not being able to find it, it escaped my memory entirely that we had to figure on it in item No. 1.

Q. What has refreshed your recollection on the subject?

A. A conversation with Mr. Gardner. He recalled it to my mind immediately that we had figured on

(Testimony of Lionel Heynemann.)

that. That only pertains to part of the answer. With regard to the testing of the tank, I thought of that last night at home. [1850—1763]

Q. I still do not appreciate the difficulty.

A. It shows you that it took me nearly half a day to get my mind into that shape that was necessary to remember just exactly what we did figure on.

Q. You have refreshed your mind now and know about this tank-top. There ought not to be much difficulty to give me the details, and then we can ascertain afterwards what, if anything, you have left out. It seems to me that you are suggesting difficulties that are largely imaginary because you have told me that you have all the data from which you made those figures?

A. If I said that I was mistaken.

Q. What other data do you wish now to suggest as missing?

A. You asked me yesterday with reference to the thickness of the top plates, and the size of the angle-irons. I made a statement to you that the plates were only a quarter of an inch thick and the angle-irons $2\frac{1}{4}$ or $2\frac{1}{2}$. I don't remember just what I did mention. In order for me to assure myself with regard to the actual thickness of that plate, and the actual size of the angle-irons I will have to figure out the scantling of the ship.

Q. By the scantling of the ship you mean what?

A. I mean the scantling number of Lloyds. There are several standard numbers that guide the constructor in the sizes and weights of material.

(Testimony of Lionel Heynemann.)

Q. Could I have that schedule that I was examining you upon?

Mr. McCLANAHAN.—This one (producing)?

Mr. FRANK.—Yes.

Q. Have you made any endeavor to ascertain what has become of page 149 of this sketch-book?

A. I have made no endeavor with regard to any pages of that book at all so I don't know just what 149 is. [1851—1764]

Q. That is the estimate?

A. No, sir; I have made no endeavor to. I should like to add that you stated that I said I had all the material here. I believe I mentioned that we also needed the ship.

Q. Do you mean to tell us that you did not take the size of the plates and put them down in your sketch 145?

A. I may have done so. (After examination.) Now, I come to think of it, I don't believe that we had any means at that time of ascertaining the thickness of the plates except as I stated before by going over the scantling number at Lloyd's.

Q. How long will it take you to produce that Lloyd's book?

A. I could not say. I don't think it would take very long. The particular Lloyd's book that this vessel was built from I may not be able to procure at all.

Q. Did you not have it when you made these figures?

A. I was going to continue, Mr. Frank. I have no

(Testimony of Lionel Heynemann.)

doubt that the newer Lloyd's book has not been changed in the particular that we will have to look up in reference to the thickness of the tank-top, and I believe we can come close enough to it by taking one of the modern books, or one of the recent books rather.

Q. You do not want us to understand that the 1910 book is not accessible?

A. Not at all. The reason I mentioned this point is the way you frame your question about getting the proper book. The proper book in the case was the book that was issued when the vessel was building, which I understand is a good many years ago, and it may be difficult to get hold of that particular book.

Q. You did not have that book when you made the other figures? A. No, sir. [1852—1765]

Q. You can have the same book that you had last April a year ago?

A. Yes, sir. I want to mention another difficulty so as to show you what the troubles are in the way of making a new estimate. With reference to the cleaning of the tank, I do not remember whether we figured on the tank cleaning with the plates off, or the plates on.

Q. You mean with the top plates off, or the top plates on?

A. Yes, sir. Another thing I do not remember is, how we figured the cleaning of the tank, with reference to the manner in which the gases were first driven out. Sometimes those tanks are seamed, as I stated yesterday. Sometimes they allow water to

(Testimony of Lionel Heynemann.)

run through. Sometimes the tanks are filled with water. I should have to refresh my mind with regard to these points by either going on board of the ship, or seeing somebody that knows about these things. You furthermore asked me a question about the litening holes, whether those were cut in the ship or out of the ship. I don't remember those details. I mention these things to show you the difficulties in the way of making a new estimate of an item.

Q. Those details, Mr. Heynemann, were not matters that you could observe yourself, anyhow, were they? A. No, sir.

Q. They were matters that somebody else told you about?

A. Yes, sir; that is, not all; not all the matters.

Q. Those that you have mentioned? A. No, sir.

Q. How did you find out whether the cleaning was done with the tank-tops off or the tank-tops on?

A. By being told.

Q. How did you find out whether the litening holes were bored in place, or bored before placed?

A. By being told. [1853—1766]

Q. How did you find out any other details with respect to the cleaning out of the tank?

A. With respect to the cleaning out of the tank we had to rely on what we were being told.

Q. So seeing the ship would not help you in any of those respects?

A. Yes, sir; but we are talking about the whole item of No. 1.

Q. I am talking about the particulars of item 1 in

(Testimony of Lionel Heynemann.)

which you are suggesting your difficulties.

A. You are talking about the cleaning, and I am talking about the whole item of No. 1.

Q. Give us any more of the difficulties that stand in your way in item No. 1.

A. I should want to go aboard the ship to see what facilities there were for handling plates, the location of the hatch, and matters of that kind. I would want to go and see how the plates were arranged, with reference to the margin plates, and with reference—

Q. One at a time. What would the hatch have to do with this tank?

A. If there was no hatch at all, it would cause more expense in handling the plates, in handling all the material.

Q. You do not remember, now, whether there was a hatch or not?

A. I cannot recall just now whether there was a hatch or not. I think there was, though.

Q. You mean a hatch over that particular portion of the hold of the vessel? A. Yes, sir.

Q. What is the next item?

A. I would want to refresh my mind with regard to the way the plates butt up against the bounding-bar of the shaft-alley. I have no clear recollection now whether they went underneath the angle-iron, or whether they butted right up against it.

Q. What is your further difficulty?

A. I would also want to [1854—1767] look at the tank-top on the margin plates.

Q. For what purpose?

(Testimony of Lionel Heynemann.)

A. To see whether possibly the margin plate was bent over the tank-top, or whether there was an angle-iron there.

Q. What are your further difficulties?

A. I should like to count the number of rivets.

Q. Did you count them before? A. Yes, sir.

Q. You do not mean that you counted the number of rivets; you mean the rivets only shown on the top of the tank.

A. The tank-top; we could not count what we could not see.

Q. What is your other difficulty?

A. I have in mind that the entire tank-top was not reconstructed. I would want to go over the part that was.

Q. For what purpose?

A. For the purpose of re-estimating item No. 1.

Q. Now, haven't you drawn here a sketch of the tank-top with measurements and details?

A. Yes, sir.

Q. For that very purpose? A. I have.

Q. Is it not sufficient? A. It is not.

Q. Is that not what you acted upon at that time?

A. We had a number of other sketches.

Q. You told me that these were all the sketches and all the details that you had. Now, where are the others?

A. I don't remember making that statement. If I did make it, I am mistaken.

Q. Where are the others now?

A. Those others were hand sketches, that we made

(Testimony of Lionel Heynemann.)

on board ship, or that we made while estimating; rough hand sketches; they were destroyed.

Q. Is not the detail of those hand sketches embodied in 145?

A. Not necessarily; they may have been. [1855—1768]

Q. Don't you think they are now?

A. It is possible that they may have been. I think they are, with reference to that tank-top.

Q. Is there any other difficulty?

A. None that I can think of. I have mentioned all.

Q. Do you wish us now to understand that without seeing the ship it would be impossible for you to give us any idea, for instance, of the amount of material that you figured on as going into the surface of that tank-top?

A. No, sir; I don't want to leave that impression. I am only relating to you what difficulties there are in the way of reproducing the exact estimate that was made once before. In other words, when we went on board of that ship we were given a great deal of information that was at our fingers' ends when we made the estimates.

Q. That is, given information how?

A. By word of mouth.

Q. Some one told you things?

A. Yes, sir; not alone that, but we saw a good deal of details that may and may not have escaped our memory, and that might affect this estimate.

Q. That is, you saw details that were pointed out to you by Mr. Kinsman; is that right?

(Testimony of Lionel Heynemann.)

A. No, sir, not necessarily. He may have pointed out in a general way, for instance, in reference to No. 1, "Here is a tank-top," and we would look at the details of it ourselves. I am only trying frankly to tell you the difficulties of replacing and reproducing an estimate.

Q. Very well, then. You have the details here to show the amount of material that went into that tank-top? A. As far as the sketch goes, I have that.

Q. Now, I would like you to give us your estimate of that particular item?

A. Do you mean right now?

Q. Yes.

A. I could not very well do it. I mentioned to you [1856—1769] yesterday that those are sketch plates.

Q. Yes.

A. Now, the way to figure sketch plates is to take a stock list of some steel concern that furnishes plates, and then you lay out the stock plates so as to have as little waste as possible on the stock plates. If I were to figure an estimate and not figure in the waste, you would immediately count it up against me. That is the reason I don't care to make the estimate now.

Q. In other words, Mr. Heynemann, you wish us to understand that you take a stock plate and attempt theoretically to fit that stock plate to the particular opening that is to be covered and cut away the surplus as waste; is that right?

A. I think you have the general idea, Mr. Frank, only you used the word "theoretically." It is not a

(Testimony of Lionel Heynemann.)

question of theory. It is a condition that confronts us when we have a certain number of plates to get out in a particular form; then we lay in these plates to scale on the stock plate in the most favorable way so as to have as little waste as possible.

Q. Without confining ourselves to President Cleveland's distinction, I still insist it is a theory on your part as compared with the actual operation of the man who did the work, is it not? A. No, sir.

Q. It is not?

A. It is not. I should say that a man was very careless that ordered these plates without having gone through that same process.

Q. But having gone through the same process, the fitting of the plates is still the proof of the pudding, is it not?

A. I don't quite get the gist of your question.

Q. The setting of the plates is still the proof of the amount of [1857—1770] waste that would be necessary.

A. I still do not understand your question, Mr. Frank.

Q. I cannot make it any plainer, Mr. Heynemann. In figuring this tank-top, what different kinds of labor did you allow for?

A. I think we went through that yesterday.

Q. If we did, we will do it again to-day. I do not think we did touch on it.

A. My idea of the work on the tank-top is about as follows: at first the matter of cleaning the tank would have to be considered. The holes had been previously cut.

(Testimony of Lionel Heynemann.)

Q. What holes?

A. In the bottom of the ship, for the purpose of cleaning, and I would then want to inquire, as I said before, whether the plates were taken off and the tank was then cleaned, or just how it was cleaned; but a certain amount of labor of, I should say, helpers came in on the cleaning; that is one class of labor.

Q. How much helpers' labor did you allow on the cleaning?

A. I don't remember. I know it was quite an amount, though.

Q. Did you figure it as a separate item?

A. We certainly did.

Q. Helpers' labor? A. Yes, sir.

Q. And you had no idea to-day how much helpers' labor you allowed? A. No, sir.

Q. Very well. What is the next item?

A. After the tank had been cleaned and the plates cut out, rivets cut out, and such work on the frames and floors and intercostals cut away that were deteriorated, the work of reconstruction could begin.

Q. Now, let us get the amount of labor and the nature and kind of labor that you allowed for cutting away those parts.

A. There would be a certain amount of riggers; a certain number of helpers; a certain number of ship-fitters. I may also state [1858—1771] that, previous to this, the work of sending the men in there to do the construction work, probably a chemist's charge would be involved, to see if all the gases were out; that would be an item of expense.

(Testimony of Lionel Heynemann.)

Q. Have you any idea how many riggers you allowed for?

A. No, sir; I have no idea at present in regard to the number of men we figured on for any of this class of work.

Q. What rates did you allow for the different classes of men on this work?

A. We allowed the rates as per your own billhead.

Q. In other words, you figured on it as you suggested yesterday as though the rate in our billhead was a rate given for a ten hour day instead of an eight and a half hour day; is that right?

A. No, sir.

Q. You applied the rate per hour charged in our billhead to what you calculated to be the actual hours worked; is that right?

A. No, sir; I would not say that, either. I know that our general estimate was made on straight time, but I remember that we figured in a number of instances day's time. For instance, I remember riggers—figuring on a day's work for riggers. If I am not very much mistaken, we took a nine hour day as the basis.

Q. A nine hour day?

A. A nine hour day; and on top of that, as already stated, we added the \$2,000.

Q. The \$2,000 you stated was for—

A. (Intg.) For extra work and bonus work on the extra work.

Q. What do you call bonus work?

A. Well, on account of this difference in hours.

(Testimony of Lionel Heynemann.)

Q. That is what it was allowed for?

A. That is what it was allowed for.

Q. How did you happen to figure on day's work on this particular [1859—1772] job instead of hours as you told me yesterday?

A. I don't say that I did.

Q. It is very hard for me to follow you, then, Mr. Heynemann; what did you say?

A. I said, I remembered in making the total estimate that we sometimes did figure on day's work in some of the items. Whether we did that with reference to item No. 1, I don't remember.

Q. Do you remember any item that you did that with reference to? A. No, sir.

Q. You do not? A. No, sir.

Q. Now, let us take items 6 and 7. I show you your sketch detail and ask you whether or not that does not give you every detail necessary to figure upon that subject. (Handing.) A. By no means.

Q. It does not? A. No, sir.

Q. What more do you require?

A. I require the same items, to a large extent, that I would require to make an intelligent estimate on the tank-top.

Q. You have your checker floor plate and sizes there, have you not? A. Yes, sir.

Q. You have your angles and sizes?

A. I do not by any means know, and I do not believe that is the entire lot of angles that we figured on.

Q. In other words, you want me to understand, then, that the memorandum that you have presented

(Testimony of Lionel Heynemann.)

to us as complete is not complete?

A. It is by no means complete, no.

Q. Yesterday you told me those were all the details that were necessary for figuring.

A. I don't remember that I did. If I did, I am mistaken. [1860—1773]

Q. You are mistaken to-day?

A. Yes, sir. I think I told you that I thought the ship was necessary, too.

Q. Yes.

A. Another point I wish to make about this angle-iron; while that may cite the amount of angle-iron figured on, we would have to determine just how that angle-iron was cut up; how it was used; part of it may have been used to bend around parts of the machinery; it would by no means, nor could any man figure on the work by being presented with that list. He would have to go aboard the ship and examine it very thoroughly. I happen to remember the item on No. 6. I think 6 and 7 is marked \$500. That is a very large item and you can see by that list of material that it is a comparatively small lot of material; most of it is labor in that \$500 item.

Q. You arrive at the labor, do you not, by consideration of the details stated here on No. 6 of your sketch?

A. No, sir; we arrived at the details by frequent visits to the ship.

Q. I say the labor.

A. And I answer, we arrived at the labor by frequent visits to the ship.

(Testimony of Lionel Heynemann.)

Q. That is these three or four visits that you made preceding this calculation?

A. Yes, sir. You have no doubt been on the ship yourself and you know the conditions back of the engine; it is a very complicated situation. A great many of those plates are cut. There is not a plate in there that is not cut to fit some part or other.

Q. Yes, but you are an expert in this matter, and it seems to me that you should be able, having that training and education which you say you have, to carry some small part of this detail in mind, [1861—1774] considering, as I have suggested to you before, that on the direct examination you did not fail to remember anything for a second.

A. Will you kindly reread that question to me, Mr. Reporter.

Mr. McCLANAHAN.—That is not a question, is it, Mr. Frank?

Mr. FRANK.—Yes, it is. He can make such reply to it as he sees fit.

Mr. McCLANAHAN.—Read the question to the witness.

(The last question read by the Reporter.)

The WITNESS.—I do not understand the last part of it. (The Reporter again reads the question.) There are so many points involved in that statement that I should like to have it segregated.

Mr. FRANK.—Q. Does not your training help you to remember these matters of detail which you have so carefully studied and so carefully figured out?

A. By no means. It is not a question of study and

(Testimony of Lionel Heynemann.)

learning. While I have an idea of the situation, still when you come to figure on it, you have to have these details before you. I also would like to have this understood. I think, Mr. Frank, this is the first time you have complimented me by calling me an expert. My idea of an expert is that he should be a man of extraordinary competency. I do not consider myself any more than ordinarily competent.

Q. You do not consider yourself expert on these matters?

A. Not in your sense. That is not in the sense in the way I state. I really don't know what an expert estimator is. I never heard of such a thing.

Q. You never heard of such a thing?

A. As a man being an expert estimator.

Q. Why not?

A. I have heard of an expert locksmith and an expert ball-player, but I never heard of and in fact don't know [1862—1774] anybody that calls himself an expert estimator.

Q. What is the peculiarity of the business of estimating that prevents anyone becoming expert at it?

A. People may become expert at it in a sense; but no matter how expert they may be at it, they would have to go on board of a vessel in a great many instances to refresh their memory. It would be impossible for them to carry all the details in their mind.

Q. Is that the only distinction that you wish to make between an expert estimator and an expert ball-player?

(Testimony of Lionel Heynemann.)

A. An expert ball-player might be one in a million, and I do not consider myself one in a million.

Q. Mr. Heynemann, have you not furnished the representative of the Matson Navigation Company with a more detailed report of the cost of these repairs than that which has been furnished to us?

A. No, sir, I have not. On the contrary, I have never furnished this sheet, this itemized sheet.

Q. Pointing to "Agreed between Mr. Gardner and L. H."?

A. Yes, sir. The only estimate we have furnished the Matson Navigation Company is the estimate, as far as I can remember, of April 29th.

Q. That is the letter we have been talking about?

A. The letter.

Mr. FRANK.—Now, I should like to have those two letters, Mr. McClanahan. (The letters were handed to counsel.) I offer the first one in evidence and ask to have it marked Libelant's Exhibit Heynemann No. 1.

(The letter is marked "Libelant's Exhibit Heynemann No. 1.")

I now offer the second one— [1863—1775]

Mr. McCLANAHAN.—You had better distinguish between the two.

Mr. FRANK.—I am distinguishing—which the witness has testified to was rewritten a day or two ago with the yellow copy attached, as Libelant's Exhibit Heynemann No. 2.

(The letters, etc., are marked "Libelant's Exhibit Heynemann No. 2.")

(Testimony of Lionel Heynemann.)

I now offer in evidence the sketches concerning which the witness has testified, which bear the impression "S. S. Hilonian 1910," and ask that that be marked Libelant's Exhibit, Heynemann No. 3.

(The sketch-book is marked "Libelant's Exhibit Heynemann No. 3.")

Q. I notice, Mr. Heynemann, on "Libelant's Exhibit, Heynemann No. 2," the letter of McClanahan & Derby concludes, "It may be just as well to have your Mr. Diericx collaborate with these two gentlemen in their work." Did Mr. Diericx collaborate with you in making up this report?

A. He did not, except that I believe he took us down to the steamer on one occasion. But my memory is not even clear on that point. But with regard to the estimate, he did not collaborate with us.

Q. Did he not furnish you with the plan upon which your estimate has proceeded?

A. No, sir, he did not.

Q. Who did?

A. I don't know what you mean by the "plan."

Q. You must recognize that your estimate has a definite plan which is not a natural one for a person asked to estimate upon any given piece of work. You have made segregations and exceptions.

A. Yes, sir.

Q. Is that not right?

A. We have made segregations and exceptions; that is right. [1864—1776]

Q. At whose suggestion?

(Testimony of Lionel Heynemann.)

A. At the suggestion of the letter of Mr. McClanahan.

Q. And that is the only aid you have had in making up this estimate?

A. I do not like to answer a categorical question in that way; the only aid we have had in making up the estimate. I should say no. We have had aid that I have detailed before.

Q. You made an allowance here, Mr. Heynemann, of \$1300 and odd for failure to remove the crank-shaft? A. Yes, sir, that is correct.

Q. Can you give me the details by which you arrived at that figure? A. I could not.

Q. Why not?

A. Because it was the result of a great deal of work, figuring, refiguring, reconsidering, and it is a final figure that we arrived at as a fair figure. We had understood right along that \$2,000 was the estimate given by one of the United Engineering Works.

Q. You so understood? A. We heard.

Q. That is, some one told you so?

A. Yes, sir, we heard from somebody in connection with this litigation—I don't remember who it was—that \$2,000 was the figure that one of the gentlemen of the United Engineering Works stated it would be worth not to take the crank-shaft out but to do all the rest of the work. We were not affected by that figure. Our figure was \$1398.

Q. You must have in mind the particular elements that go to make up that figure.

A. I have not them in mind just now.

(Testimony of Lionel Heynemann.)

Q. As an expert—if you will permit me to use the expression once more—you do have in mind what you think what would be necessary to take that shaft out of the ship and remove it to the shop, do you not?

A. I have some items in mind. [1865—1777]

Q. Give us some of those that you have in mind.

A. My idea about taking out the crank-shaft would be that the best way to take it out would be to strip the entire upper works above the crank-shaft, take out the bolts that connect the cylinders with the columns, take out all the upper works of the ship over the engines, bring the ship under the shear-legs, take the cylinders off and raise them by aid of the shear-legs and put them on the wharf; in other words, you would come pretty close to dismantling the entire engine. Of course this would mean that all the reciprocating gear would have to be taken apart and stowed away, and all the parts properly marked, the binders all taken off all the bolts marked and stowed away, and possibly—I will put it this way—not possibly, but no doubt the coupling bolts would have to come out between the thrust and the crank-shaft and then the crank-shaft would be lifted bodily out of the ship and placed on a car on the wharf, in order to be able to transport it to the machine-shop.

Q. And those elements that you have just enumerated are the elements for the cost of which you have deducted this \$1,350?

A. First of all, I think it is \$1,398; but it by no means comprises all the—

Q. They are part of that \$1,350?

(Testimony of Lionel Heynemann.)

A. They are part of that \$1,398.

Q. What is the rest now?

A. The thrust-shaft would have to come out in the same way, and both parts taken up to the machine-shop; the thrust and crank-shaft would have to be coupled together again. I believe the specifications called for the thrust and crank-shaft being put on the lathe and tested together in its entire length. Certain changes would have to be made to the machinery in the machine-shop to be able to accomplish that purpose. [1866—1778]

Q. What kind of changes?

A. I don't believe that the United Engineering Works have a lathe that would do that work without changes.

Q. And is the providing of that machinery another element in that \$1,398?

A. The changes to the lathe would necessarily be an item to consider in figuring up the cost of this job.

Q. Was it an item?

A. I don't remember whether the changes to the lathe was. If it was not, I think it should have been. I think our idea in not figuring it at the time was that we had no positive knowledge that the United Engineering Works was not fitted to do the work in in the way specified.

Q. Do you know whether you did or did not figure it?

A. I don't believe that we did figure that.

Q. You don't know? A. I don't know.

Q. You have suggested, Mr. Heynemann, some-

(Testimony of Lionel Heynemann.)

thing about experts in estimating. What is the foundation for the knowledge on which all estimates are based?

A. That is rather a difficult question to answer. I should say first of all a proper education; a certain amount of knowledge, knowledge of the subject, a general knowledge of the subject, and a natural aptitude to be able to lay out work in one's mind to get at the results.

Q. Have you finished? A. Yes, sir.

Q. Your answer is simply a circle, Mr. Heynemann. I am asking you for the foundation of that knowledge. Do you wish us to understand that your course at the Royal Polytechnic Institute at Hanover gives you any knowledge for a practical estimate of this kind? A. It certainly does.

Q. You are basing your assertion of ability then on your course at Hanover; is that it?

A. I have not asserted any ability. [1867—1779]

Q. You are by coming here and offering the estimate, if in no other way.

A. You may look at it in that way, but I have not made any assertion.

Q. I understood you to say yesterday that your chief experience in estimating was acquired at the Fulton Iron Works? A. That is correct.

Q. Is it not a fact, Mr. Heynemann, that the only basis for estimating is your knowledge, practical knowledge of other work of a similar nature—the cost, I mean, of other work of a similar nature done under similar circumstances? A. No, sir.

(Testimony of Lionel Heynemann.)

Q. It is not? A. No, sir.

Q. Why did you dwell on your past experience in estimating?

A. Because I think that it is of value in reference to estimating on this work.

Q. Only incidentally of value?

A. I don't know what you mean by incidentally of value; it is of value.

Q. What is the relative value then of it?

A. I could not answer that question.

Q. Is it not the chief element of value in your training? A. I would not say so.

Q. You would not say so? A. No, sir.

Q. In your experience at the Fulton were your estimates relied upon by the Fulton Iron Works?

A. They were.

Q. Did you do it yourself? A. Very often.

Q. Very often? A. Yes, sir.

Q. By that I am to understand you did not generally do it yourself?

A. No, sir. I think I can make the statement that generally the estimates that I made were made by myself, but I made a great many estimates in conjunction with Mr. Quigler, our marine engineer [1868—1780] at the time, and also with other foremen.

Q. What do you mean by "conjunction," Mr. Heynemann?

A. We would go on board together and do just the same as Mr. Gardner and myself have done in this case.

(Testimony of Lionel Heynemann.)

Q. You have no practical experience yourself, have you, Mr. Heynemann, in the mechanical part of machine work or hull work? A. I certainly have.

Q. You have? A. Yes, sir.

Q. Where did you get it? In the draughting-shop?

A. When I was an apprentice in 1871 at the Fulton Iron Works I worked on marine engines myself at that time as an apprentice. But if you mean by practical experience in hull work, that I have taken a hammer and chisel and driven rivets myself, I have not.

Q. Is that the extent of your practical experience in machine work—your apprenticeship?

A. No, sir, it is not. I should like you to define, Mr. Frank, what you mean by practical experience. Do you mean actually doing the work yourself?

Q. I mean such actual contact with the work as would give you a knowledge of the details.

A. In that case I should say that I have had that actual experience right along; not alone at the Fulton Iron Works, but at the other iron works too; at some of the other works.

Q. That is, you mean as a draughtsman?

A. As a draughtsman, and I would then come naturally in contact with the work.

Q. But you have never done any machine work or hull work except what you have testified to during your apprenticeship?

A. I have. I have done work myself on several vessels, where I have actually done the work myself.

(Testimony of Lionel Heynemann.)

Q. To a limited extent?

A. To a limited extent. [1869—1781]

Q. The Fulton Iron Works failed under your administration, did it not? A. It did not.

Q. Which part of that question does the denial apply to? It certainly failed.

A. It applies to the entire statement.

Q. It failed?

A. I don't know whether you want to call it that. I think probably that would describe the condition, but it was not under my management.

Q. How long had you left it at the time that it failed? A. I should say 5 or 6 years.

Q. As long as that? A. Yes, sir.

Q. Now, your present work as Pacific Coast Manager of the Goldschmidt-Thermit Company has nothing to do with this class of business, has it?

A. It has.

Q. In what respect? A. In marine work.

Q. What is the particular article that you handle?

A. The particular article is a welding material that is used for welding rails in the street, making a continuous joint, and for welding engine-frames particularly with reference to locomotives in the large railroad shops, and nearly all the large railroad companies of the United States are using our material now, and—

Q. In other words, Mr. Heynemann—

Mr. McCLANAHAN.—Let him finish his answer.

A. (Continuing.) —and it also is used for repairs on the drydock of vessels.

(Testimony of Lionel Heynemann.)

Mr. FRANK.—Q. Assuming it is used for all those purposes it is nothing but a simple unit, a tool for welding purposes, is it not?

A. It is very far from being a simple unit for [1870—1782] welding purposes. It involves a good deal of knowledge and a good deal of experience to know how to handle it. I may say that at first the Goldschmidt-Thermit Company, which is a very large concern, having branches all over the world, had its interests placed in the hands of a mercantile concern here. They found that it would be absolutely necessary to place it in the hands of an engineer, and it was only for that reason that they made a change; that it was more of an engineering than a mercantile proposition.

Q. That was for the sale of it?

A. No, sir, it was not for the sale of it. On the contrary, for the use of it.

Q. It does not bring you practically into relation of marine engineering or repairing, or ship-building or repairs except in so far as you endeavor to sell the process to those who are engaged in that business?

A. You have an entire misconception of it, Mr. Frank. One of its principal uses is for the repair of certain parts of vessels on the drydock.

Q. We will assume that, then. But your office is to sell it to the people who do repair work?

A. No, sir, it is not.

Q. What do you do?

A. We look at the vessels on the dock and we examine into conditions whether a repair with our

(Testimony of Lionel Heynemann.)

process is practicable. If it is we make a bid, and if possible get the work. Then, I have to go down myself to the vessel that is on the dock, or at the wharf, and make all the plans for carrying on the work, and then do the work myself; that is, with my assistants.

[1871—1783]

Q. That work is welding, is it not?

A. That work is welding.

Q. That is all there is to it?

A. There are other things connected with it. There is a good deal of molding work connected with it.

Q. Welding and molding?

A. Welding and molding and designing.

Q. Returning now, Mr. Heynemann, to the question of your fee. You said you had received part of your fee. Is the balance of your fee in anywise contingent upon the success or failure of the respondent in this case?

A. I cannot tell you anything about the balance of my fee because I don't know. I expect to get a fee, or I expect to get the balance of my fee, at the conclusion of the case, no matter how it goes.

Q. You have no understanding concerning it at all? A. I have no understanding, no.

Q. You still decline to tell us how much you have received on account?

A. I really cannot see why that is any of your concern, Mr. Frank, why you should ask that question at all. I cannot see any bearing on that question.

Q. I do not understand that you are the judge of

(Testimony of Lionel Heynemann.)

the materiality of the testimony.

A. The reason I say that, Mr. Frank, is that I was very much surprised that you should ask that question at all. It casts a sort of reflection on me when you ask it.

Q. I am sorry.

A. In connection with what went before. I do not believe you wilfully want to offend me, but it bore a very nasty inference.

Q. I am not doing anything wilfully in this case, Mr. Heynemann. [1872—1784]

A. I must say that I resented it at the time.

Q. That may be, and I am sorry if you feel that way, still if I consider it material, and I consider it my duty to ask the question, that would be the end of every consideration with me. Now, I am asking you to answer that question, if you will.

Mr. McCLANAHAN.—I shall have to make the same objection that it is immaterial, and instruct the witness not to answer.

A. Am I instructed to answer?

Mr. McCLANAHAN.—No, you are instructed not to answer. I suggest it.

Mr. FRANK.—You heard what the Court said about these things this morning?

Mr. McCLANAHAN.—Yes. And I noticed you did not bring that matter up before the Court. I was waiting for you to do so. As you said he refused to answer a question, I assumed at the time that was the question you referred to. You said you were going to refer it to the Court, and you had the opportunity.

(Testimony of Lionel Heynemann.)

I imagined from the remark that the Court made at the time that he would compel the witness to answer all material questions that you came to the conclusion this was not material and therefore did not raise it with the Court.

Mr. FRANK.—That was not the reason I did not raise it with the Court. The discussion had taken a more extensive line than I had anticipated, and that was the reason I did not want to raise any more questions at that time.

Q. Are we going to get an answer, Mr. Heynemann?

A. I would prefer not to answer that question.

Q. Very well. Now, I take it, Mr. Heynemann, that on your direct examination, where you have made statements about certain work having been done, and certain work not having been done, [1873—1785] or certain work being compensation for other work, that those statements were made as the result of what someone else had told you?

A. No, sir, that is not entirely correct. The compensation work, I think, is a matter of record that was given us in a paper of 15 items which we have called general specifications. I don't know how you entitled the paper here.

Q. Just show us the paper that you refer to. There are the exhibits. (Pointing.)

A. In a paper of 15 items that I call the contract and have referred to as the contract in several instances the compensation was marked, that is to say, that one piece of work should be an offset to the way

(Testimony of Lionel Heynemann.)

this specification then read originally.

Q. That is, you mean you were furnished with a paper? A. Yes, sir.

Q. Which is not now in evidence here?

A. I don't know whether it is in evidence or not.

Q. Look it through and see.

Mr. McCLANAHAN.—I *will that* it is not, to save the witness the trouble.

Mr. FRANK.—Q. You were furnished with a paper, which is not now in evidence here, which specified that certain work was to be acted upon as compensation for other work stated in the specification; is that right? A. That is right.

Q. Who furnished you with that?

A. I think Mr. McClanahan furnished us with that.

Q. Is that the only exception, then, that you wish to make to the statement that I have made?

A. No, sir, with reference also to a number of items appearing in the billhead entitled [1874—1786] “Respondent Kinsman Exhibit No. 2,” we went through these items with Mr. Kinsman and Mr. Klitgaard and found where the work, as specified in that billhead, was covered by extra bills that had been rendered, and which we have called schedules 2 to 10.

Q. That is, you and Mr. Kinsman and Mr. Klitgaard sat down in the office, went over that list, and went over these schedules, and between you, segregated what you thought should apply to those schedules 2 to 10; is that right?

A. No, sir, we did not sit down in the office. We were aboard of the ship. A number of those sched-

(Testimony of Lionel Heynemann.)

ules are so plainly covered by the schedules that they need no advice at all from the outside to show that they are covered by the schedules.

Q. Then those are your two sources of information. One is what Klitgaard and Kinsman told you, and the other is your own conclusion drawn from a reading of the billhead items, and a reading of the bill as rendered; is that right? A. And our—

Q. So far is it right?

A. So far it is not right. You say only—

Q. Go on.

A. It is also a matter of common sense to distinguish in a number of cases between the billhead items and the schedules.

Q. That common sense is your judgment, is it not?

A. Yes, sir, and also from what we learned by our own observations on board of the ship.

Q. There is nothing from your observation on board of the ship that will enable you to determine what part of that work was done under an agreement, and what part of that work [1875—1787] was done under a time and material proposition, is there?

A. Yes, sir, there is.

Q. How?

A. Take, for instance, the stack contract.

Q. Very well.

A. If one of the items reads to repair the stack-guys, I do not think that one needs any statement from any of the crew of the ship to know that that item would be plainly covered by a schedule that reads that a stack should be furnished and installed.

(Testimony of Lionel Heynemann.)

Q. But you said that your observations aboard of the ship enters into that. You do not mean that now, do you? A. Yes, sir, I do mean that.

Q. Then how? A. I have stated how.

Q. All right; we will accept that as your statement. Anything else?

A. Well, I cite that as an instance.

Q. What steps did you take, Mr. Heynemann, to examine the face of the low-pressure valve?

A. To examine what?

Q. The face of the low-pressure valve?

A. We took no steps at all.

Q. You did not examine it then? A. No, sir.

Q. How did you know whether the H. P. and I. P. shoes were reconstructed or not?

A. We were told that the new shoes had been made instead of being reconstructed.

Q. How much Challenge metal did you allow for on those shoes? A. I don't remember.

Q. How did you arrive at the amount of Challenge metal that was used in those shoes?

A. We were told the amount of Challenge metal that was used on that. I believe there was an allowance to be made for the amount of metal to be used on those shoes.

Q. That is, you were so told?

A. Yes, sir. [1876—1788]

Q. How much did you allow for the bronze on the low-pressure eccentric straps?

A. I happen to remember that figure. We allowed 300 lbs. for bronze.

(Testimony of Lionel Heynemann.)

Q. At what price?

A. I believe it was 35 cents.

Q. How do you happen to remember that figure?

A. Because it was a subject of recent conversation not very long ago.

Q. Between who?

A. I think I heard Mr. Kinsman make that statement.

Q. Make what statement?

A. The 300 lbs. of bronze were to be allowed for.

Q. And it was upon the suggestion of Mr. Kinsman, that you made that allowance? A. Yes, sir.

Q. I mean as to the number of lbs.?

A. As to the number of lbs. He did not say anything about the price, but I had in mind that that is what we allowed, 35 cents.

Q. Where does that allowance appear in this "Agreed between Mr. Gardner and L. H."?

A. Do you happen to remember the item number?

Q. No. 5 of the specifications?

A. Yes, sir, I know it is No. 5 of the specifications, but that is not what I mean. I mean the number of the item of the billhead.

Q. I do not apprehend that you will find it itemized in that way on the billhead?

A. I do not believe that I will find it itemized in that way, but one of the items of the billhead refers to the matter spoken of, that is, to the low-pressure eccentrics. I can read it all through and see. (After reading.) On item 132 reading, "Remove the low-pressure straps and bore [1877—1789] same out to

(Testimony of Lionel Heynemann.)

suit eccentric sheaves," I remember that we did not figure at all when we made this estimate on the bronze on account of its being covered by item 5 of the general specifications. We figured on it, however, later on.

Q. What do you mean; that you did not allow the bronze to us at all? A. Not at this time.

Q. Where did you allow it to us in that schedule?

A. In this schedule?

Q. Yes. A. Not at all.

Q. Not at all?

A. Not at all in this schedule; no.

Q. Meaning, now, in the schedule marked, "Agreed between Mr. Gardner and L. H."?

A. We did not allow for it at all.

Q. Where did you allow for it? In this figure of \$22,000 odd?

A. I think I informed you yesterday, that subsequent to the vessel going on the dock, and it may possibly have even been before that, we had a meeting with Mr. Kinsman, and went over such items as we thought had not been either properly allowed for, that is to say, in which the United Engineering Works had not received sufficient credit by us for work done and material furnished, and also over such items as we thought we had been too liberal with.

Q. I had forgotten about that, Mr. Heynemann. Do you mean to produce that schedule to-day?

A. Yes, sir.

Q. Have you it with you?

A. Yes, sir, I have it with me.

(Testimony of Lionel Heynemann.)

Q. Will you kindly let me have it?

A. There it is (handing).

Q. What do these two papers represent? The different sides of the account, or are they continuous?

A. Those two papers represent the credits due the Matson Navigation Company on one side, and the United Engineering [1878—1790] Works on the other, in reference to the items that I have just spoken about, or in connection with the items that I have just spoken about.

Q. Which column is the Matson Navigation Company's side?

A. The first column is the Matson Navigation Company's side and the second column is the United Engineering Works.

Q. Do I understand from this, Mr. Heynemann, that on items 6 and 7 you have made an error in your original estimate of \$450 out of \$500?

A. No, sir, it is not an error. It is only a different way of looking at the same thing. In our original estimate we figured on items 6 and 7 as an entire extra and on reconsideration we found that we were doing the Matson Navigation Company an injustice to so consider it, and we then gave the Matson Navigation Company credit for \$450.

Q. For what reason?

A. For the reason that we considered the floor-plates, to which this item refers, I believe, items 6 and 7 were covered by item No. 1 of the general specifications, and also by the contract under which

(Testimony of Lionel Heynemann.)

the United Engineering Works engaged themselves to supply and install a circulator.

Q. How did you come to reconsider that?

A. In discussing it.

Q. With whom?

A. I think with Mr. Kinsman and Mr. Gardner.

Q. Mr. Diericx?

A. I don't remember that Mr. Diericx had anything to do with it; I don't think he did.

Q. Anybody else?

A. Mr. McClanahan was present. I think we discussed it with Mr. McClanahan.

Q. Did he make any suggestions respecting it?

[1879—1791] A. Who?

Q. Mr. McClanahan. A. He may have.

Q. What is the \$525 that follows that?

A. We did not subtract the whole item of \$500 from the estimate of extra work because we did not consider that it should all be deducted. We allowed an item, I think, of \$25 for the handling of plates, and item 7 we allowed for raising the platform and building a little step over the shaft between the engine and the thrust-shaft.

(An adjournment was here taken until to-morrow, Wednesday, November 8th, 1911, at 10 A. M.)

[1880—1792]

Wednesday, November 8th, 1911.

LIONEL HEYNEMANN, cross-examination resumed.

Mr. FRANK.—Q. Mr. Heynemann, there is a charge in that list for scaling the boilers. I presume

(Testimony of Lionel Heynemann.)

you could not get inside the boilers, could you?

A. No, sir; we did not.

Q. And you had no means of ascertaining the amount of sealing that was done?

A. We acted on information that we received on the ship.

Q. What kind of information?

A. I believe it was Mr. Kinsman who told us about it.

Q. What did he tell you about it?

A. I don't remember.

Q. You don't remember what he told you?

A. No, sir.

Q. You don't remember how many hours you allowed for that? A. No, sir.

Q. Or any details? A. No, sir.

Q. In fact, Mr. Heynemann, I understand from your testimony that that is the condition with reference to each one of these items; you are unable to give any details at all.

A. I do not admit that at all. If you will go through each item I will be able to tell you what I remember and what I do not.

Q. I have tried to get the details from you, Mr. Heynemann. So far, I have not got anything.

A. I think you have a great many details with reference to the tank-tops. You examined me about the tank-tops, among others, and I think you have a good many details.

Q. Yes, but I have not the details which you say are necessary to make the figures.

(Testimony of Lionel Heynemann.)

A. You don't expect a man to remember the figures? [1881—1793]

Q. I will not discuss that question with you, but if you will select the items where you can remember the details which are necessary to make the figures I wish you would do it. A. I could not do that.

Q. On none of that?

A. I do not say that. If you will ask your questions I will do the best I can to answer them.

Q. You appreciate the fact that we would be wasting a great deal of time in that way. You have all the items before you, and if you will go through them and indicate to me which particular ones of them you can give me the details of which make up that figure, we will not only save time, but I think we will get through it more intelligently.

A. Each item, particularly the larger items, because I do not suppose the five dollar item will play very much of a part; on each of the larger items there are so many figures with reference to material and different classes of material, and with reference to labor and different classes of labor, that it would be impossible for me to do what you are asking.

Q. Mr. Heynemann, you said something on your direct examination about the arbitrary nature of Captain Matson. Have you had a hand in other disputes in which he has been engaged?

Mr. McCLANAHAN.—I want to correct counsel. I do not think Mr. Heynemann made that statement, though it does appear in "Libelant's Exhibit Heynemann No. 3."

(Testimony of Lionel Heynemann.)

Mr. FRANK.—The record will show whether he did or not.

Q. Just answer the question, Mr. Heynemann.

A. Will you kindly repeat the question.

Mr. FRANK.—Read the question, Mr. Reporter.
(The Reporter reads the question.)

Mr. McCLANAHAN.—I object to the question upon the ground that it is incompetent, irrelevant, immaterial and no bearing [1882—1794] whatever on the issues involved in this suit.

Mr. FRANK.—Q. Go on, Mr. Heynemann.

A. In reference to the statement that you refer to, I would like to bring it out that when I was asked to serve on this case I did say that my sympathies were more to the United Engineering Works than they were with the Matson Navigation Company, and my principal reason for so stating was that I was more of a shopman, and had more sympathy with the shops, and with the men that were managing the United Engineering Works than I had with the steamship company.

Q. Now that you have got done with that, please answer the question that was asked of you.

A. I will come to that, but I want to premise my statement.

Q. I think I am entitled to a categorical answer and not a lecture on the subject. It is capable of an answer yes or no. Just read the question, Mr. Reporter.

(The Reporter reads the question.)

A. I have had a hand in one dispute that Captain

(Testimony of Lionel Heynemann.)

Matson was connected with.

Q. That is, he had a dispute similar to the present one, with the Union Iron Works, did he not?

Mr. McCLANAHAN.—I object to the question as immaterial.

A. There was a question with reference to the steamer "Rosencrans" in which I was asked to serve for the Union Iron Works and it was in reference to a repair bill on that steamer which, at the time, I understood was owned by the Matson Navigation Company.

Q. Have you known of any similar disputes in which Captain Matson has been engaged?

A. Not that I can remember now.

Mr. FRANK.—I think that is all. [1883—1795]

Redirect Examination.

Mr. McCLANAHAN.—Q. Mr. Heynemann, you have referred to a reconsideration of certain items of this repair work of recent date, since your estimate of April the 29th. Will you state why the balance in favor or against the United Engineering Works as found by your reconsideration of these items that I have referred to was not made a part as a revision of your estimates of April the 29th.

A. It was not made a part because the items balanced so nearly within a very small amount that we did not consider it necessary to change the estimate.

Q. In your conclusion in that matter, did the fact of your having made an arbitrary allowance of \$2,000 for overtime and bonus cut any figure at all?

Mr. FRANK.—I suggest that that is leading.

(Testimony of Lionel Heynemann.)

A. I am not sure that I grasp the question. Will you kindly read it, Mr. Reporter?

(The Reporter reads the question.)

Mr. McCLANAHAN.—Q. I mean, in your conclusion not to change your estimate. Now, read the question to the witness again, Mr. Reporter.

(The Reporter reads the question.)

A. I did.

Q. Why?

A. Because we thought it a very liberal allowance, and that really every item of the allowance that we made on the extra work should be credited with its *pro rata* of the overtime.

Q. What has that last statement to do with this question of debit or credit as found by recent investigation?

A. I do not know that I quite understand your question, Mr. McClanahan. [1884—1796]

Q. Go back and read the record, Mr. Reporter. Let us get this clear. (The Reporter reads from the record.) I want to know what that latter statement has to do with the question.

A. I will say in the consideration of the entire matter of a balance, either for or against, that we did not figure in any overtime. We did not consider the overtime.

Q. I am afraid we do not understand each other, Mr. Heynemann. My question to you is directed solely to this recent investigation of certain items which you say you reconsidered on new information.

A. Yes, sir.

(Testimony of Lionel Heynemann.)

Q. Where there were debits and credits one way or the other on those items. I want to know if this \$2,000 had any part to play in your determination not to change by reason of this new investigation your original estimate. We are not understanding each other because you are talking about how you have apportioned that \$2,000, or how it should be apportioned. You can very easily see that has nothing to do with the inquiry I am after.

A. All that I can say is that in the reconsideration of these different items that were mentioned to us principally by Mr. Klitgaard, the figure \$2,000 played no part.

Q. Played no part? A. Played no part.

Q. If there was a balance in favor of the United Engineering Works on the reconsideration of those items, why did you not allow it to them?

A. Because we considered \$2,000 was a very liberal estimate.

Q. We are still at cross-purposes. If this estimate of your reconsideration of the several items had nothing to do with the overtime or bonus, did it—

A. No, sir. [1885—1797]

Q. Then, why are you speaking of the \$2,000, which I understand to be the bonus and overtime item?

A. Yes, sir.

Q. With reference to these debits and credits?

A. We did not consider that item in connection with the credits and debits in the matter under consideration.

Q. Then I am asking you now why it was if there

(Testimony of Lionel Heynemann.)

was a credit in favor of the United Engineering Works as the result of this reconsideration of certain items, why it was you did not give them credit for it in your original estimate of April 29th.

A. We did give them credit on our original estimate of April 29th.

Q. Your original estimate of April 29th remains the same to-day, does it not? A. It does.

Q. Since April 29th, you have done certain revision work, have you not, on certain items? A. Yes, sir.

Q. And you say there is a credit one way or the other? A. Yes, sir.

Q. What have you done with that credit? You have ignored it, have you not?

A. We have ignored it.

Q. Why?

A. Because it did not amount to anything. It was a balance of credits and debits which so closely balanced each other that we did not change our estimates. We did not consider it necessary to change our estimates.

Mr. McCLANAHAN.—Mr. Heynemann has been examined on his cross-examination to some extent on this document, consisting of four sheets of paper, headed "Agreement between Mr. Gardner and L. H." I want to offer that in evidence, and ask that it be marked Respondent Heynemann Exhibit No. 4.

(The document is marked "Respondent Heynemann Exhibit No. 4.") [1886—1798]

Q. You have been questioned about the "Rosen-crans" dispute and repair bill? A. Yes, sir.

(Testimony of Lionel Heynemann.)

Q. Who did you act for in that matter?

A. For the Union Iron Works.

Q. And against the Matson Navigation Company?

A. And against the Matson Navigation Company.

Q. And your decision in that matter was against the Matson Navigation Company? Have I asked you that? A. You have not.

Q. I will withdraw that question.

Mr. FRANK.—You might as well persist in it because I shall ask it myself, and it will save me the trouble.

Mr. McCLANAHAN.—I will let you ask it.

Q. Mr. Heynemann, you on your cross-examination have referred to various conditions that were told you, with respect to the work. I will ask you whether in making your estimates you acted on that knowledge?

A. On that knowledge, and on what we saw ourselves.

Q. And where the knowledge was of matters that you did not see you acted on that knowledge?

A. Yes, sir.

Q. You have been asked whether you examined the face of the low pressure valve. You replied that you had not. Was an examination of the face of the low pressure valve necessary in order to intelligently estimate on the work that was done?

A. It was not.

Q. I show you "Respondent Matson Exhibit No. 1," which is the letter of the United Engineering Works, addressed to the Matson Navigation Com-

(Testimony of Lionel Heynemann.)

pany, referring to tank-top work, and I will ask you if the proposal as contained in that letter covers the same amount of a greater amount of work than was done on the tank-top as you saw it and knew it at the time of your examination. [1887—1799]

A. The letter mentioned a proposal to do more work than was actually done, inasmuch as it proposed to replating the entire top of the double-bottom tank on one side only from shaft alley out to margin angle, and from shaft-alley bulkhead to next bulkhead directly forward of same. The plating was not completed from shaft-alley bulkhead to next bulkhead directly forward of same.

Q. With reference to the extent of the work stated in this letter, and the work as actually performed, that is, the difference between the two, what have you got to say?

A. That we only figured on the work as done.

Q. That is not an answer to my question. Read the question, Mr. Reporter.

(The Reporter reads the question.)

A. That is all that I have to say, that we only figured on the work that we saw.

Q. That does not answer my question. Was the difference a material difference or an immaterial difference?

A. It was quite a material difference.

Q. That is an answer to my question. How material was it? What did it involve? I understand there was an omission to remove the after plate and the forward plate.

(Testimony of Lionel Heynemann.)

A. It involved just those two items you have mentioned.

Q. How extensive would be the work, and of what character would be the removal of those two plates?

A. With reference to the removal, and the re-furnishing of the plate forward of the after bulkhead, and aft of the forward bulkhead, it would involve considerable extra work and labor if the entire tank-top had been removed, and if these plates had to be removed. [1888—1800]

Q. Would the removal of those plates be different, or the same relatively as the removal of the other plates?

A. The surface covered by the forward plate that was not removed was considerable, and I think considerably larger than the surface of any of the other plates.

Q. Do you know whether those plates were attached to the bulkhead?

A. They were attached to the bulkhead.

Q. Then answer my question as last asked.

A. These plates being attached to the bulkhead would naturally cause considerable work to be done in order to replace them.

Q. Would that work be in addition to the work that would have to be done if they were not attached to the bulkheads? A. Yes, sir.

Q. In making your estimate, how did you determine the thickness of the plates on the tank-tops and the size of the angle-iron used. I think you have answered the question, but I want to make it clearer.

(Testimony of Lionel Heynemann.)

A. I believe that I looked up the matter in Lloyd's, and I figured up the scantling of the particular vessel, and I looked it up in Lloyd's, in which the top of the ballast-tank is mentioned particularly.

Q. What proportion of the \$2,000 arbitrary allowance for bonus and overtime would properly apply to the \$800 figured on the tank-top?

A. It would be in the *pro rata* of the extra work that is to say, \$800 as a numerator, and \$6,280 as a denominator to represent the portion of the \$2,000 that would properly be added to the amount specified which in this case is \$800, so as to get at the actual allowance.

Q. That is a matter of simple computation. Will you please do it for me? The total amount of the extras as shown by item Exhibit 4 is \$6,280.50. [1889—1801]

A. This calculation is so simple, yet I do not care to make it, because I do not want to make a mistake.

Q. Could you not make it and then say that that would be an approximation?

A. I can give you an approximation—I prefer not to give you an approximation. I feel a little nervous this morning, and as the matter is so simple I prefer to let somebody else figure it out.

Q. The method of Apportionment would apply to each one of the 140 items of extra work as shown by your Exhibit 4?

A. Yes, sir.

Q. In your direct examination you referred to item 9 as shown by "Kinsman Exhibit No. 2," as an extra; have you anything further to say on that matter now?

(Testimony of Lionel Heynemann.)

A. I would like to state that I think it should properly have come under the reassembling of the engine with the exception of some small angle-irons that were fitted, I believe, to the top rim of the iron guards, and also I believe there was a pipe flange riveted to the bottom of the floor as a drain.

Q. And it was for that work that you have allowed how much money? A. \$40.

Q. Do you remember whether those guards referred to in item 9 of "Kinsman Exhibit 2" were repaired or renewed?

A. We were informed that they were repaired and not renewed.

Q. What examination did you make of those guards, to verify that, if any?

A. We examined them and gave them as close an examination as we thought proper.

Q. What did the examination result in?

A. The examination resulted in our opinion that the plates were not renewed.

Q. I am not speaking of the plates; I am speaking of the guards. [1890—1802]

A. The guard-plates. The guards only consist of the plates. We came to the conclusion that those plates had not been renewed.

Q. Mr. Heynemann, in "Libelant's Exhibit Heynemann No. 3," on the first page, there appears this statement, referring to a conversation with me: "Told him I was a shopman and rather sympathized with the U. E. Works, and had found Matson very arbitrary; he said, 'Well, we want your opinion, any-

(Testimony of Lionel Heynemann.)

how.' ” Do you remember whether that was the extent of the conversation which led to your employment? A. I remember it was not.

Q. What was the balance of the conversation?

A. I remember that I told you besides mentioning that I was in sympathy with the United Engineering Works and with the managers whom I considered friends, that I was much more of a shopman than I was a man to be selected by the owners. In fact, I used the expression that I was the wrong man for your side, that you had better get somebody else.

Q. Did you or did you not have in mind at that time your former connection with the Matson Navigation Company with reference to the “Rosen-crans”?

A. I also had that matter in mind at the time, and I will further state that so far as I remember you said, “We want you anyhow,” and then I made the remark, “If after my statement to you you still want me, I am then willing to serve.”

Q. Did this sympathy as a shopman which you have referred to follow you through the work of estimating this job?

Mr. FRANK.—That is not only leading, but it is a very profitable, self-serving proposed piece of testimony, and I object to it. [1891—1893]

A. I tried to make a fair and reasonable estimate and tried to discard everything else from my mind.

Mr. McCLANAHAN.—Q. Who was the actual writer of the letter of April 29th, 1910, introduced in evidence here as “Libelant’s Exhibit Heynemann

(Testimony of Lionel Heynemann.)

No. 1''? A. Will you let me see the letter?

Q. I mean by that, who dictated the letter (handing)?

A. I dictated the letter in Mr. Gardner's presence, and Mr. Gardner frequently changed, or frequently suggested changes in the subject matter.

Q. In the dictation?

A. In the dictation, yes, as we were dictating.

Q. I understand you do not now remember where you got the statement which is contained in the last 5 lines of the letter, on the first page?

A. No, sir; we did understand that to refer to the crank-shaft.

Q. That is not what I am referring to. I am asking you where you got that statement, if you know, about the contract.

A. I could not tell you; I don't remember.

Q. I understand it was that statement which led to the redrafting of the letter of April the 28th?

A. Yes, sir, and also a palpable error that we made in this way, that we had received certain information that certain bills had been paid, and we afterwards found those bills had not been paid.

Q. The letters remain the same on that subject if you will examine them. Now, Mr. Heynemann, referring to these unpaid bills, as you stated them in your letter of April 29th, amounting in the total to \$937.07, they are included in your present estimate of \$22,922.56? A. They are. [1892—1804]

Q. But at the time that the letter was drafted you thought that those bills had been paid?

(Testimony of Lionel Heynemann.)

A. I thought so.

Q. I refer you to item 98, "Kinsman Exhibit No. 2," and ask you if you wish to make any change with reference to your former statement.

A. Item 98, I remember being confused in that item. We did figure on that as an extra.

Q. And did not apply that to Schedule 7?

A. And did not apply that to Schedule 7.

Recross-examination.

Mr. FRANK.—Q. I understand, then, Mr. Heynemann, that in the "Rosencrans" dispute the decision was against Mr. Matson?

A. I did not say so.

Q. I am asking you. That is the form in which I am asking you the question.

A. A certain bill was charged by the Union Iron Works and there were certain deductions made in this bill.

Q. But they were immaterial compared with the amount which was claimed.

A. It was not what you would call a large reduction. My memory now is a little hazy on the subject, but I am sure that the reduction was not what you would call a very material one, not a very large one.

Q. Not what was claimed by any manner of means?

A. How do you mean, what was claimed?

Q. What was claimed by Matson?

A. I don't know what Captain Matson claimed.

Q. You knew what the dispute was?

A. Yes, sir.

Q. You knew what amount he was claiming as an

(Testimony of Lionel Heynemann.)

overcharge? A. I did not. [1893—1805]

Q. You considered at that time that the decision was practically against Captain Matson?

A. Yes, sir; I did consider that the decision was against him.

Mr. FRANK.—That is all.

Mr. McCLANAHAN.—That is all, Mr. Heynemann.

Mr. FRANK.—Now, I move to strike out the estimate of Heynemann and Gardner presented as evidence in this case upon the ground that the same is based on hearsay.

Mr. McCLANAHAN.—As I cannot get hold of Mr. Gardner just now, I think I will do a little testifying myself.

Mr. FRANK.—All right.

[Testimony of E. B. McClanahan, for Respondent.]

E. B. McCLANAHAN, called for the respondent, sworn.

The WITNESS.—I am the attorney for the respondent in this case. The date of my employment I do not exactly remember. Prior to June 10th. I drew the amended answer. At the time of the service of the amended answer on the libelant's counsel, on the 17th of June, 1910, I received a telephone shortly after the service from Mr. E. L. Putzar in response to a letter which I had previously written to him, a copy of which letter reads as follows—

Mr. FRANK.—What is the purpose of this testimony, Mr. McClanahan?

Mr. McCLANAHAN.—The purpose of this testi-

(Testimony of E. B. McClanahan.)

mony, Mr. Frank, is to rebut the inferences that have been injected into the case by you bearing on the question of our failure to call in this case Mr. E. L. Putzar, who was our employee on this work as a time-keeper. The letter reads as follows: [1894—1806]

“June 10, 1910.

Mr. E. L. Putzar,

c/o United Engineering Works.

224 Spear St.,

San Francisco.

Dear Sir:—

We represent the Matson Navigation Co. in a suit brought for repair work on the S. S. ‘Hilonian,’ and by the 15th inst. we must have information in regard to certain items of the bill rendered for this work. As we understand you had charge of the time kept for the ship during this work, it seems likely that you can be of assistance to us and we should be pleased, therefore, to have you call at this office on or before next Wednesday.

We address you c/o United Engineering Works, as we have been told that in all likelihood they would know of your present address.

Trusting that we are not inconveniencing you by our request, we remain,

Respectfully yours,

McCLANAHAN & DERBY,

EBM. Attorneys for Matson Navigation Co.”

Mr. Putzar said that he had only just received the letter, because it had been addressed improperly to the United Engineering Works, or in their care, and

(Testimony of E. B. McClanahan.)

he asked me what I wanted. I am not attempting now to give the exact words used, but the gist of the conversation. I told him I had wanted him to assist me in ascertaining certain facts in connection with the case and requested that he call on me. He replied that [1895—1897] he did not care to call on me; that at the proper time, if called upon, he would give his evidence in this case, and it was not necessary for me to interview him. It seemed from what he said—

Mr. FRANK.—I object to your conclusions, Mr. McClanahan.

Mr. McCLANAHAN.—Then I will state more definitely. I asked him if there was any difference between himself and Captain Matson. The gist of his reply was that he did not like Captain Matson's treatment of him in failing to give him a recommendation to the Portland Steamship Company, I think. Since then I have had no communication with Mr. Putzar whatever, nor do I know where he is. In regard to the redrafting of the letter of April 29th, 1910, I will say that that was redrafted solely at my suggestion and for the reason that I did not understand the proviso contained on the first page, nor could I learn from either Messrs. Gardner or Heyne-mann where they had secured that information. I did, however, when the matter was under discussion refer them to a report made to me by Mr. Dierickx at the time of my employment, in which that proviso was contained—

Mr. FRANK.—I object to any importation of that

(Testimony of E. B. McClanahan.)

sort into the testimony. So far as your present purpose or any legitimate purpose may be concerned, it is sufficient that you call their attention to it and have it changed. Any report or papers of Mr. Diericx on the subject is utterly immaterial. Mr. Heynemann has testified on the stand here that he does not now know where he got the information.

The WITNESS.— —together with the further statement showing clearly that the proviso referred to the possible non-removal of the crank-shaft. I asked Mr. Gardner if he had [1896—1808] that report in his possession or a copy of it, and he said he thought he did have it.

Cross-examination.

Mr. FRANK.—Q. You never made any attempt to locate Mr. Putzar after that, or to call him into the case, did you?

A. I never made any attempt to call him in the case, Mr. Frank, after that.

Q. You did, however, then, make an attempt to locate him? A. No, sir, I never have.

Q. Do you know whether the Matson Navigation Company now know where he is? A. I do not.

Q. I remember upon—

A. Let me modify that. I heard from someone—I rather think it was Mr. Klitgaard or Mr. Kinsman—that Mr. Putzar, during the progress of the case, was in the city on a certain day, but who it was that gave me the information I do not remember.

Q. You never directed your clients, or anyone to

(Testimony of E. B. McClanahan.)

make any endeavor to get into communication with him?

A. I think I did ask Mr. Diericx to see if he could locate Mr. Putzar.

Q. Is that the extent of the endeavor to locate him?

A. Well, I know that I never received any definite information from Mr. Diericx as to where he was.

(A recess was here taken until 2 P. M.) [1897—1809]

AFTERNOON SESSION.

[**Testimony of Fred A. Gardner, for Respondent.**]

FRED A. GARDNER, called for the respondent, sworn.

Mr. McCLANAHAN.—Q. What is your name, age and business?

A. Fred A. Gardner; age, 45; business, consulting engineer and marine surveyor. .

Q. How long have you been engaged in business?

A. About four years; approximately four years.

Q. Whereabouts?

A. In San Francisco; with an office in this building.

Q. Will you please state the experience that you have had that has fitted you for the business, and also what business you have done since you were so fitted.

A. In connection with the business I first entered as an apprentice at the Aetna Iron Works in San Francisco. Later I was in the shops of the Northern Pacific at Sprague, Washington. I was also connected with the Rice Engine Works establishment here in San Francisco. I later put in the necessary

(Testimony of Fred A. Gardner.)

apprenticeship in the matter of oiling and tending water and going through the various stages in connection with sea service, to enable me to obtain first a third assistant's license as an engineer; later a second assistant's license and a first assistant's license, and finally an unlimited chief engineer's license for ocean-going vessels. I was then connected with the Market Street Railway Company as Chief Engineer of the Bryant Avenue power station for a matter of 5 or 6 years. I may say my experience at sea up to the time I received my chief engineer's license was approximately six years. After leaving the Bryant Street power station I was engaged by the Union Iron Works in connection with the completion of the [1898—1810] Japanese cruiser "Chitose," and proceeded to Japan later in this vessel as a guarantee for the Union Iron Works, the contract being for one year, but succeeding in procuring the final payment of \$47,000 four months before it was due. I was released from the "Chitose." I went down to Hong Kong, for the purpose of looking over the shops and dry-docking facilities in Hong Kong, as Hong Kong was considered probably the largest repair-shop in the world, to familiarize myself with the repair work, and on returning to San Francisco I was given the position of assistant to the engineer in chief.

Q. In what works?

A. In this capacity I had particular charge of repair work in marine matters; also some shore work in connection with the power station such as the North Beach power station and the station known

(Testimony of Fred A. Gardner.)

as Station A, belonging to the San Francisco Gas & Electric Company at that time.

Q. What company are you referring to as being assistant to the engineer in chief?

A. I was assistant to the engineer in chief of the Union Iron Works. Later I was given the position of engineer in chief of the Union Iron Works. My experience there was very largely connected with repair work, and I was with them about seven or eight years, I think. I do not recall exactly just the time. After severing my connection with the Union Iron Works I opened an office as a consulting engineer with the encouragement of Lloyds' agency, who stated that they would probably be able to give me a great deal of their business, which they have done up to the present time.

Q. Have you had any experience since opening an office, as a consulting engineer, in the matter of repair work? [1899—1811]

A. The principal part of my business has been on repair work.

Q. How long a period of time did your experience extend over that fitted you for the profession of a consulting engineer?

A. Well, from the time I was about 17 years old—between 16 and 17—I made the matter of engineering a study and practiced it as well.

Q. What, Mr. Gardner, was your experience at Hong Kong?

A. I occupied my time in visiting the drydocks and repair-shops. Having procured a letter of introduc-

(Testimony of Fred A. Gardner.)

tion to Mr. Gillis, who was then the manager of the principal works in Hong Kong, I had a very good opportunity to see their methods of handling repair work, but my object in being sent to Hong Kong was principally for the purpose of making the acquaintance of steamship people.

Q. Were you familiar with the market value of material and labor used in repair work in the year 1909? A. I was.

Q. You know this is a suit brought by the United Engineering Works against the Matson Navigation Company for repair work on the steamship "Hilonian"? A. So I understand it.

Q. I show you the libel filed in this case and ask you to examine the schedules annexed thereto and marked or stamped in red ink up in the right-hand corner.

A. Schedule No. 1. Do you wish me to read through this for the purpose of identification?

Q. I wish you to identify them if you can.

Mr. FRANK.—The witness has no doubt been through them already. (Addressing the witness.) Have you not, Mr. Gardner?

A. I don't know if I have these particular ones; I have seen some that have the general appearance of these. [1900—1812]

Mr. McCLANAHAN.—Q. You need not read through the first schedule. I will hand you "Kinsman Exhibit No. 2," and ask you if you can identify that schedule.

A. I notice an alteration here in lead-pencil in item 37, "Supplied and secured plates around stern-

(Testimony of Fred A. Gardner.)

frame," and something that I cannot make out.

Q. That is the lead-pencil alteration?

A. The lead-pencil alteration here, "And line-plates around stern tube bore," it seems to me it should be. This appears to be a copy to the best of my knowledge of what I understand Schedule 1 to be.

Q. You may assume that "Kinsman No. 2," which you have just laid down, is a copy of Schedule No. 1 in the first three pages. Now, pass on to Schedule No. 2.

A. What is the question that you asked me, please?

Q. Can you identify that?

A. This is a bill, a copy of which was given to me at one time.

Q. Pass to No. 3, can you identify that?

A. That is also a copy of a bill that I have seen before.

Q. Pass to the second sheet of No. 3.

A. This is a copy of a bill which, by reference to other bills—I don't recall just now which one—we decided was a duplicate charge. Either this or the other one is a duplicate charge. I do not recall which.

Q. Pass on to No 4.

A. I recognize this as a bill of which I have had a copy.

Q. Pass to No. 5.

A. The same remarks apply to this bill.

Q. Pass to No. 6. A. And to this, also.

Q. Pass to No. 7.

A. I had a copy of this one, also. [1901—1813]

(Testimony of Fred A. Gardner.)

Q. Pass to No. 8.

A. I had a copy of this one also.

Q. Pass to No. 9.

A. I had a copy of this one also.

Q. Pass to No. 10.

A. I had a copy of that one also.

Q. Aside from assuming, Mr. Gardner, that "Respondent Kinsman Exhibit No. 2" is a copy of Schedule 1 in the first three pages, you may assume in the further course of your examination, that the paper which I now hand you entitled "Respondent Saunder's Exhibit No. 1." is a copy of specifications prepared by the respondent in this case and submitted for bids to the United Engineering Works, the libelant. You may also assume that the bid of the United Engineering Works for the work covered by the specifications was accepted, the work to be done for the sum of \$11,749 on a 25 calendar daytime limit. You may also assume that after the work was undertaken by the United Engineering Works that by reason of certain agreements between representatives of the respondent and the libelant certain changes were made in the work called for by these specifications; that the changes so made were agreed to be made without affecting the contract; that there was a change of this character made in the second item of the specifications; that there was a change of this character made in the fourth item, and in the fifth, and in the seventh and in the fourteenth.

A. Can I make a note of those?

Q. No. I will refer you to them again. You may

(Testimony of Fred A. Gardner.)

also further assume that the "Hilonian" was delivered at the yards of the United Engineering Works, to the libelant, on the morning of the 23d of August, 1909. You may also assume that in the course of the work the vessel was docked on the Marine railway of the United Engineering Works at one o'clock [1902—1814] on the 10th of September, 1909, and left the Marine railway at one o'clock on the 16th of September, 1909. You may also assume that there are six holidays, including Sundays, in the period of 25 calendar days running from the 23d of August, 1909. You may also assume that there is no dispute between the parties in this action over the sum of \$170.06, found on Schedule 2 of the libel; that there is no dispute between the parties in the sum of \$540.61, found on the first page of Schedule 3 of the libel. You may also assume as to Schedule 4, that there is no dispute between the parties as to the first item of \$330, as to the fourth item of \$50, or to the fifth item of \$40. You may also assume that there is no dispute between the parties over the charges found on Schedules 5, 6, 7 and 8; and that there is no dispute as to the charge found on Schedule 9 reading as follows: "To construction of new smoke-stack, removing old and restoring new, \$900." And that there is no dispute over the charge found on the tenth Schedule of the libel. You may also assume that under the original specifications the crank-shaft of the steamer "Hilonian" called for removal under the ninth specification was not removed from the ship. You may also assume that at the time of

(Testimony of Fred A. Gardner.)

the repair work in question being done, the United Engineering Works were under a contract with the Matson Navigation Company to supply and install complete and in running order one circulator, having a 30-inch composition rudder and 8 inches by 6 inches single piston valve engine, all to be complete, coupled up with all pipe connections, valves, etc. Now, Mr. Gardner, showing you "Kinsman Exhibit No. 2," I will ask you if you have ever made an examination of the work specified on that exhibit.

A. I have made an examination of the greater part of it. You [1903—1815] mean the work on the ship, not as described here, but actually the work on the ship that has been done. I made an examination of the greater part of it.

Q. The greater part of what?

A. The work on the ship as described by this.

Q. Did you do it alone?

A. I did it alone first, and then in company with Mr. Heynemann.

Q. Mr. L. Heynemann?

A. 'Mr. L. Heynemann.

Q. Who has been a witness in this case?

A. Yes, sir.

Q. Will you please state now just the times as far as you can remember, when you visited the ship "Hilonian" and examined the work which you have referred to?

A. To the best of my recollection, my first visit to the ship was sometime in January or the fore part of February, 1910. Then between the dates of

(Testimony of Fred A. Gardner.)

March the 13th and 16th, 1910, possibly the 17th, I would not be sure, and in company with Mr. Heynemann, I think. The first was April 22d or early in April, during the time that the vessel was in port at that time. I made several visits with Mr. Heynemann. I think also on one of these visits in April you were on board of the ship. To the best of my recollection I visited the ship again on June 9th when she was afloat out in the bay, at which time, I think, you were also present.

Q. What year was that?

A. 1910. Later I visited the ship on two different occasions, to the best of my recollection, in September, 1911; once while she was in drydock at Hunter's Point.

Q. Does that statement contain a statement of your visits?

A. That is all I can recall at present. [1904—1816]

Q. Prior to the time when Mr. Heynemann and yourself went to the ship, how many times had you visited it alone?

A. It is so long ago that it is very difficult to say positively, but to the best of my recollection it was 5 or 6 times.

Q. And subsequently after Mr. Heynemann had joined you, how many times did you visit the ship?

A. It is very difficult to recall exactly now. I should say about nine times—8 or 9 times, possibly.

Q. What was the purpose of your visiting the ship before the visits made to the ship with Mr. Heynemann?

(Testimony of Fred A. Gardner.)

A. To the best of my recollection, Mr. Diericx called at my office and asked me if I had time to make an estimate, and if I would be willing to do so on certain repairs that had been made on the "Hilonian" by the United Engineering Works as he had recently been engaged by the Matson Navigation Company, as I recall the matter now, and he wanted to find out if the bill as presented was a fair and reasonable charge for the work performed. As I had the time I agreed to make this estimate with the understanding that I should have ample opportunity to examine the vessel and the work that was stated to have been performed as set forth in the bill handed to me.

Q. What bill was handed to you at that time?

A. On the first occasion I think it was only the bill which is known as Schedule 1.

Q. And it was in furtherance of that arrangement that you made these several visits prior to Mr. Heynemann joining you?

A. To the best of my recollection that was the reason for it at that time.

Q. What did you do on these visits made to the ship prior to Mr. Heynemann's accompanying you there? [1905—1817]

A. Well, to begin with, I went aboard the vessel and met the man who was at that time First Assistant Engineer, a Mr. Kinsman, and went over this entire list with him while sitting in a room to see if he was familiar with all of the details of the work.

Q. By this "list" you refer to "Kinsman Exhibit No. 2"?

(Testimony of Fred A. Gardner.)

A. "Kinsman Exhibit No. 2"—for the purpose of seeing if he could be of any assistance to me in preparing this estimate in the matter of pointing out the work that was actually performed. Deciding that he was very familiar with the work, I then asked him to go over it with me in detail on the ship, got into a suit of overalls, and proceeded to do so, taking the items up, as I recall it now not in the order in which they are shown on this exhibit, but as it was most convenient in going about the ship; rather than to go from the forward end of the ship to see something that was at the after end we simply marked that and later when we were at the after end of the ship we took that matter up.

Q. What did you visit the ship subsequently for, and what did you do there?

A. Subsequently to this particular visit?

Q. The first visits?

A. The subsequent visits were practically of the same nature as the first; aside from going over the list in the First Assistant's room, the time was devoted to examining the different parts of the ship and the different parts of the engines, etc., that were stated to have been repaired, renewed or reconstructed.

Q. How much time do you suppose was spent by you prior to Mr. Heynemann's collaborating with you in the work?

A. I think I have stated already the time.

Q. You have stated the number of visits made, but we have no [1906—1818] idea how extensive the

(Testimony of Fred A. Gardner.)

visits were as to time, whether you were there minutes, or hours, or days.

A. On each of these visits, I believe, as near as I can recall at the present time, I spent an average of 8 hours, possibly more. I think it is safe to say that I averaged that length of time on each visit.

Q. Now, taking up the inspection of the work in connection with Mr. Heynemann, how much time was spent on it by you, and what was the nature of your investigation?

A. Well, I would say that the length of time would average about the same per visit that had been consumed while I was making visits alone. Of course, it is to be borne in mind that this was quite a long time ago and taxing one's memory as to such a length of time, it is a little difficult to recall positively, but it is as I recall it now.

Q. It was a matter of hours, each visit?

A. Yes, sir.

Q. What was the nature of the investigations made with Mr. Heynemann?

A. In going over the work practically in the same manner that I had gone over it alone.

Q. Did anyone accompany you on the occasions when you inspected the work with Mr. Heynemann?

A. We were shown parts of the work, and had some of it described to us that we could not see, by Mr. Kinsman and Captain Saunders, as I recollect it now.

Q. Did Mr. Diericx have anything to do with your inspection of the ship?

(Testimony of Fred A. Gardner.)

A. He had absolutely nothing to do with the direction of my inspection of the ship while alone or in company with Mr. Heynemann. [1907—1819] I only recall his being aboard the ship twice during the visits that I made to her. Once, I think, was on the second visit that I made, and another time was when he was on board with you.

Q. What form did your inspection of this work take, Mr. Gardner? What did you do besides having it pointed out to you and being told about it and seeing it—what did you do on the ship?

A. For the purpose of making estimates, in addition to estimates that we often made on the ship, we took measurements of parts, various sketches, sizes and dimensions.

Q. Did you do estimating on the ship itself at the time you inspected the work?

A. Yes, quite a little; in fact, the estimate was scattered over the time we were on the ship, and later when we would leave the ship and come to my office; a large portion of it was done in the evening.

Q. How was it done, Mr. Gardner—at your office?

A. Why, the items were taken up one after another.

Q. What items do you refer to now?

A. On Schedule 2.

Q. You mean “Kinsman Exhibit No. 2”?

A. “Kinsman Exhibit No. 2,” and estimated upon just as we would have estimated were we intending to bid on the work ourselves, with this exception, that instead of estimating the actual cost of the work

(Testimony of Fred A. Gardner.)

allowing for unforeseen contingencies, and applying overhead cost, overhead expenses rather, and a percentage of profit, we simply used the rates as set forth in the bill presented by the United Engineering Works.

Q. The rates charged for labor and material there? [1908—1820]

A. The rates charged for labor and material.

Q. How did you do the actual figuring? When I say “you,” I refer to you and Mr. Heynemann.

A. I hardly know how to answer that other than we pursued the method that I think is quite usual in regard to estimates of that description. We took an item and arrived at an estimate of the cost by setting down the details on scratch-paper or something of that kind, the length of time that was consumed in one class of labor and the amount of material that was supplied.

Q. Did you do that separately, or did you do it together?

A. I made a complete estimate separately, and Mr. Heynemann made another estimate. Then we went over the items in detail, that is, the items individually, not each item in detail necessarily except where we found there was some little discrepancy in our figures, and then we questioned each other as to whether we had allowed for this, that or the other, that might possibly have escaped one man’s attention. Then we made our corrections accordingly as to an agreed figure arrived at between the two figures found on that item.

(Testimony of Fred A. Gardner.)

Q. I show you "Respondent Heynemann Exhibit No. 4," and ask you if you can identify that paper (handing).

A. This is really our detail estimate of the work performed.

Q. By "our" you mean Mr. Heynemann and yourself? A. Yes, sir.

Q. Now, Mr. Gardner, calling your attention to "Saunders Exhibit 1," which is the original contract I have spoken of in my assumptions, do you remember that I asked you to assume that there was certain work changed in that specification, which we have called compensation work? Will you please go over that [1909—1821] schedule and tell me if you know whether the second item of specification was performed or not? Read the whole paper to yourself, and answer yes or no.

A. From the information we gathered aboard the ship we found that this work was not done.

Mr. FRANK.—Q. You might save us some time if instead of using the general term "from information gathered aboard the ship" you said "from what I was told," or the manner in which the information was given to you.

Mr. McCLANAHAN.—I object.

A. This was information gained aboard the ship in various ways. This particular one by seeing the change that was made, or rather the work of compensation, as it was termed.

Q. What was the work done instead of that?

A. There was a counter-balance cylinder made and

(Testimony of Fred A. Gardner.)

installed, which we saw. The valve-stem was lengthened for the purpose of connecting with the piston in this counter-balance cylinder, which we did not see, but it was thoroughly described to us, and the necessary piping we saw, which was used in connecting up this cylinder.

Q. I will ask you if the fourth item of specification was changed.

A. The high pressure and intermediate shoes were not reconstructed, but new shoes were cast and fitted to place.

Q. Were the guides restayed?

A. The guides were not restayed as described here, but a new plate was made and fitted in place.

Q. Examine the fifth item of the specification and answer the same question.

A. The high pressure eccentric straps were not remetalled. The low pressure eccentric straps instead of being remetalled [1910—1822] were bored out and fitted with bronze liners, and the upper half-pocketed and babbitted. I don't recall whether the lower half was babbitted or not, although I think it was.

Q. Please examine the seventh item and answer the same question.

A. The wrought-iron column here described was not supplied and fitted in place, but instead, a composition or bronze patch was secured to the housing and side-condenser.

Q. Examine the fourteenth item and answer the same question.

(Testimony of Fred A. Gardner.)

A. The windlass was not repaired, but instead of making these repairs two stanchions were fitted on the forecastle deck.

Q. Did you have any information, Mr. Gardner, at the time of first visiting the "Hilonian" of these changes in the original specifications?

A. Yes, sir, I think I had, and I think my testimony relative to what was furnished me at that time should be corrected in that as I now recall it, this was also furnished me, a copy of this specification.

Q. I will hand you a paper and ask you if that is the copy that you refer to (handing).

A. To the best of my knowledge and belief that is the paper.

Mr. McCLANAHAN.—We offer that in evidence and ask to have it marked Respondent Gardner Exhibit No. 1.

Mr. FRANK.—Q. I do not understand that this paper is a paper made out by you at all.

A. No, sir. It was handed to me by Mr. Diericx, I believe.

Mr. FRANK.—I do not see its materiality, and I shall have to object to it as incompetent, irrelevant and self-serving.

(The paper is marked "Respondent Gardner Exhibit No. 1.")

Mr. McCLANAHAN.—Q. Now, Mr. Gardner, I hand you "Kinsman Exhibit No. 2" and ask you to go over each item, simply naming the items as you go over them, by number instead of referring to [1911—1823] the contents, and state whether you

(Testimony of Fred A. Gardner.)

have seen the work called for in connection with that item or what information you have in regard to the work, and also whether that work in your opinion belongs to any one of the specification items and also whether in your opinion it belongs to any one of the schedule items of the libel, from 2 to 10. Do you understand my question? A. I think so.

Q. Taking up the first time of the "Kinsman Exhibit" what have you to say?

A. We saw the tank-top in item No. 1, and had the construction of the interior of the tank described to us by Mr. Kinsman, and, I think, assisted by Captain Saunders. We figured on this item as an extra.

Q. That is, you consider that it does not belong to any of the specification items, or any of the minor schedules of the libel?

A. I am not so sure about it not being one of the schedules. (After examination.) It is not connected with any of the schedules.

Q. Nor does it form part of any of the specification items?

A. It does not form part of any of the specification items. To the best of my recollection now, it was the subject of a contract, or a letter at least. I do not know if it was a contract.

Mr. FRANK.—I think we will have to quit for today. I have been trying to accommodate Mr. Gardner, but I cannot do so any longer, as I am not feeling well.

Mr. McCLANAHAN.—Let it appear that Mr. Frank being indisposed, we take an adjournment at 3 o'clock.

(Testimony of Fred A. Gardner.)

(An adjournment was here taken until to-morrow, Thursday, November 9th, 1911, at 10 A. M.)
[1912—1824]

Thursday, November 9, 1911.

FRED W. GARDNER, direct examination resumed:

Mr. McCLANAHAN.—Q. Mr. Gardner, since the session of yesterday you have spoken to me of other experiences in the line of your profession that you omitted to speak of in your first statement. Before continuing the examination under “Kinsman’s No. 2,” I wish you would finish your statement as to your experience.

A. One item of experience which I neglected to mention was my connection with the Pacific Mail Steamship Company in the capacity of First Assistant Engineer on the steamer “Peru,” running between San Francisco and the Orient. I was engaged in that capacity for about a year. I do not just recall the exact length of time, not more than a year, but about a year. I think it was 4 or 5 round trips to China.

Q. Is that in addition to the sea experience you have already stated?

A. That is in addition to the sea experience that I referred to yesterday. In connection with the work at the Union Iron Works I had entire charge of the trial trips of the United States Cruisers “Milwaukee,” “South Dakota,” “California,” torpedo destroyers “Perry,” “Preble” and “Paul Jones,” the monitor “Wyoming.” I also assisted in the

(Testimony of Fred A. Gardner.)

trials of the cruiser "Tacoma," and had charge of the trials of the merchant vessels "Californian," "Alaskan," "Arizonian," "Mexican," "Columbian" and several others that I do not recall just at the present moment.

Q. In your sea experience have you had occasion to do any repair work to machinery?

A. At the time I was going to sea [1913—1825] it was a matter of pride on the part of the engineers that they did practically all their own repair work except such work as had to be performed in large tools. Illustrating that, I might state that on one occasion while employed as first assistant on the steamer "Oregon" we removed the tail-shaft, stern tube, naturally the propeller first, installed new tail-shaft, stern-tube and propeller, the work all being performed by the ship's engineer's department under my supervision, and in a coffer-dam, the vessel not even being drydocked. We also installed a new crank-shaft, first removing the old crank-shaft from the vessel and delivering it on the dock, and received the crank-shaft that had been made on the dock, and installed that in place, the work all being performed by the engineer's department.

Q. What connection had you with the work that you have just spoken of?

A. It was under my supervision. Much of it I really did myself during the time that the crank-shaft was being constructed, not being very busy; a great deal of the small repair such as is usually done by what is termed the vice hand I engaged in myself.

(Testimony of Fred A. Gardner.)

Q. Yesterday you spoke of your experience in repair work. What does that mean or include?

A. Well, it is a pretty large subject. It includes the repairs made necessary through the wear and tear of the machinery, auxiliaries. Often the vessel's hull, also repairs made necessary on account of damage sustained through collision, submersion of vessels, fire.

Q. Did your experience in repair work include estimating the value of the work?

A. Yes, sir, the estimating of the [1914—1826] work, and in addition to that the supervision of the work after the work had been awarded to concerns to which I was attached.

Q. More particularly with regard to your experience as estimator of work, will you give us some further light on that subject?

A. My experience at the Union Iron Works was very largely connected with estimating upon repairs, alterations, and as I said before, later in the superintending of these repairs.

Q. Have you ever estimated the value of repair work that had been made and completed? Do you understand the question?

A. I don't recall that I ever had an opportunity to estimate as thoroughly on a job as I have had on this particular one, the work having been performed, and it being possible to see the major portion of it; in fact, see a great deal more possibly than one would ordinarily see in bidding on the work; surely quite

(Testimony of Fred A. Gardner.)

as much as the man who was bidding on the work would have seen.

Q. What is the comparative advantage to the man who bids or estimates the value of work he has seen, work that has been accomplished?

A. Will you repeat that again? I did not quite catch the question.

Q. Read the question, Mr. Reporter. (The Reporter reads the question.) I will add: as against work that has not been accomplished but which is to be done.

A. There is an element of time that should be taken into consideration in replying to that question as in estimating on work on which one is requested to bid, you are usually hurried, due to the fact that the man desiring this work is anxious to obtain the use of his vessel or engine, whatever [1915—1827] it may be. This condition, of course, in making this particular estimate, did not obtain as there was no rush but ample time given to go over every detail very thoroughly, therefore in reply to your question I should say that the advantage in making an estimate after the work has been performed as compared with making an estimate for the purpose of making a bid would be a very great advantage.

Mr. FRANK.—Read that last part of the answer, Mr. Reporter.

(The Reporter reads as requested.)

A. (Continuing.) I should say the man has a great advantage in making an estimate after the work has been performed over a man making an esti-

(Testimony of Fred A. Gardner.)

mate before the work has been performed, for the purpose of bidding on it.

Mr. McCLANAHAN.—Q. You say the advantage of making the estimate lies with the man who is estimating on completed work. What do you mean by the use of the term “advantage” as related to the estimate which is being made?

A. He has an advantage in that there is no necessity for making an allowance for unforeseen contingencies which is usually allowed in making an estimate before the work is performed. You really do not know in many cases what will be necessary. The work having been performed, it is very evident what has been necessary and what has been performed.

Q. Then the advantage is a matter of accuracy.

A. A matter of accuracy in preparing an estimate.

Q. As to the value of the work?

A. As to the value of the work.

Q. You have spoken of your connection with Lloyd's Register. [1916—1828]

A. Pardon me, I referred to my connection with Lloyd's Agency.

Q. Lloyd's Agency. Will you please state what your duties in that relation are?

Mr. FRANK.—I do not understand that he has testified to a fixed connection with Lloyd's Agency, only that he is at times employed by them. (Addressing the witness:) Am I right, Mr. Gardner?

A. Not exactly.

Mr. McCLANAHAN.—Q. You mean he is not exactly right?

(Testimony of Fred A. Gardner.)

A. He is not exactly right in his impressions. I think, by referring to the record you will see I said that I opened an office as Consulting Engineer, with the assurance from Lloyd's Agency that I would get a large portion of their business; that there might be no mistake in regard to that, I procured from them a statement to the effect that I was to be considered, as I recall it, their representative in connection with damage claims, in the capacity of a surveyor. There was no fixed salary attached to this appointment, however.

Q. Does that appointment hold good to this date?

A. It holds good to this date, and I am now employed by Lloyd's Agency on three different vessels that are in this harbor of San Francisco at the present time.

Q. Now, will you please answer my original question as to the duties which that relationship involves?

A. My duties are to proceed aboard of damaged vessels, ascertain the nature and extent of damage, and make recommendations for repairs, and have these repairs under general supervision while they are proceeding.

Q. Do you have anything to do with estimating on the value of these repairs?

A. Well, it is usually requested by the agency that the Surveyor make some statement as to what he [1917—1829] considers the value of the work will be. It is an estimate, yes; not a very carefully prepared estimate, not prepared in detail.

Q. And made before the work has been done?

(Testimony of Fred A. Gardner.)

A. And always made before the work has been done, yes.

Q. When this repair work has been submitted to bidders, do you have anything to do with the bids after they have been received?

A. If the matter has been referred to bidders on a job with which I am connected, these bids are referred to me for an opinion as to whether the quotation is reasonable, or not.

Q. And to whom do you give that opinion?

A. To Lloyd's agent in San Francisco.

Q. Now, Mr. Gardner, taking up your examination of "Kinsman Exhibit 2," will you pass to the next item, item No. 2, and state whether you have seen that work, or whether it is connected with any of the schedules attached to the libel and forms part of any of the original specifications.

A. We estimated on this as an extra. It is a very small item—"three holes in the bottom of the ship." When the vessel was placed in drydock we saw the plugs of two of these holes, although we could not see the actual patch that was put over little 4-inch holes, probably a flush-patch. These holes were no doubt put in for the purpose of steaming and cleaning the tank. We so considered it at least. I should like to correct my statement to the extent that we included 2 and 3 really in considering this matter as they both refer to the same subject. We took the cutting of the holes and the patching of them under one item I believe. [1918—1830]

Q. Will you state whether there was any difficulty

(Testimony of Fred A. Gardner.)

from what you saw, in determining the value of that work as an extra.

A. Are you referring to item No. 1 or item No. 2?

Q. I am referring to items No. 2 and No. 3.

A. No difficulty whatever.

Q. Pass now to item 4.

A. We figured on this as an extra. We saw the angle-iron bars.

Q. Pass to No. 5.

A. We saw and estimated as an extra for the items referred to in No. 5.

Q. Proceed.

A. To the best of my recollection we considered items 6 and 7 together. We saw these floor plates and supports back of engines and we saw the floor where raised over shaft, and saw the angle-iron bars supports for same. We considered that this work was not entirely an extra in that the work would be necessary on account of the repairs recommended in item No. 1 of the original specifications, and on account of a contract for the installation of a new circulator, said contract having been awarded to the United Engineering Works prior to the main part of the repairs in "Respondent Saunders Exhibit No. 1."

Q. I see "Respondent's Heynemann No. 4" has that on items 6 and 7 you did make an estimate of \$500, which was included in your estimate of that date, April 29th, 1910. At that time did you, or did you not, consider items 6 and 7 as an extra?

A. I think originally—we have, of course, gone

(Testimony of Fred A. Gardner.)

over these estimates a number of times; we did prior to April 29th; we have gone over them several times since for the purpose of checking them up and seeing if as a total we were correct in our estimates. While we have had no original estimate of the details of these various items we made separate estimates where [1919—1831] we received information after sending in our letter of April the 29th to see if we had been entirely just to the United Engineering Works and the Matson Navigation Company. The general conclusion arrived at after reviewing our estimate was that there should be little or no change made in it though this particular item, 6 and 7, we found was chargeable to the contracts before referred to. Let me correct myself: we made some allowance for the handling of plates in these repairs.

Q. As an extra? A. As an extra.

Q. My question referred to your original attitude in regard to 6 and 7, when the letter of April 29th, 1910, was framed. Did you or did you not, at that time, consider and figure 6 and 7 as an extra in its entirety?

A. We considered the raising of the flooring over the shaft an extra, no doubt, and we considered the reconstruction of floor-plates and supports at the back of the engine as being largely chargeable to item No. 1 of the original specifications, to the best of my knowledge at the present time.

Q. Mr. Heynemann, Mr. Gardner has produced here in his Exhibit No. 4, what he says is the original list of work with itemized prices agreed upon be-

(Testimony of Fred A. Gardner.)

tween yourself and himself of these items, and opposite 6 and 7 is the sum of \$500. Does that assist your memory as to whether or no you at that time figured on 6 and 7 as an extra in its entirety?

A. I may state that by referring this paper to me at the present time—

Q. What paper do you refer to now?

A. “Respondent’s Exhibit Kinsman 2,” and asking me the questions that you do, that I consider it more a test of memory than anything else. [1920—1832]

Q. Does the statement I have made with reference to “Heynemann Exhibit No. 4” assist your memory with regard to those two items?

A. It certainly does.

Q. As to whether you figured them as an extra or not?

A. In connection with that I think that my statement is correct in that possibly we figured on it as chargeable to No. 1, but later decided it was chargeable as an extra. We figured these things several different times with every effort to do justice to all concerned. This list was, after other considerations of the estimate, made by each of us individually, and these other conclusions arrived at, to the best of my knowledge and belief at the present time.

Q. We will pass now to No. 8.

A. We figured on a portion of the handrails where stated to have been changed in the matter of lead as an extra. We saw these handrails.

Q. I do not quite understand your answer. Does

(Testimony of Fred A. Gardner.)

it apply to the whole item, or only a portion of it as having been figured on?

A. Only a portion of it. As I recall at the present time there were some slight changes made in these handrails, some of them—one of them, I think, only.

Q. I still do not follow you. Is that item figured on as a whole, as an extra?

A. No, sir, part of it as an extra. The changes that were made in the lead of the handrails.

Q. What became of the remaining part of the work?

A. The remaining part of the work we considered as chargeable to the general taking down and assembling of the machinery in connection with the original specifications.

Q. Pass now to No. 9.

A. We saw these guards stated to have been made and fitted, [1921—1833] and found that they had not been made and fitted as the appearance of the guards indicated; that the major portion of them were of old material while it was quite evident that some new plates had been fitted to these guards, therefore we figured on that portion of it as an extra as a repair and not as having been made and fitted.

Q. What portion of it as an extra?

A. The repairs to the guards.

Q. And what did you do with the balance of the item?

A. We considered that that was a part of the taking down and reassembling of the machinery in con-

(Testimony of Fred A. Gardner.)

nection with the specification for the original repairs.

Q. What part was that?

A. The removing of them and replacing them.

Q. Pass now to No. 10.

A. We saw this bulkhead and patch referred to in item 10, and estimated on it as an extra.

Q. Pass to 11.

A. We saw this slush-pan where drain-holes had been cut in same and plug-fitted, and estimated on it as an extra.

Q. Pass to 12.

A. We saw the sheet-iron cover for turning engine, and figured on it as an extra.

Q. Mr. Gardner, I think we can save the record if you will refrain where it is appropriate from stating the contents of the items, and refer to it simply by number, of course making your explanation as full and explicit where it is necessary. Pass now to 13.

A. We saw the article referred to and figured on it as an extra.

Q. Pass to 14.

A. We saw this and figured it as an extra. [1922—1834]

Q. 15.

A. We saw this and figured on it as an extra.

Q. 16.

A. We saw this and figured on it as an extra.

Q. 17.

A. We saw the hole made by cutting away the lagging referred to, and figured on it as an extra.

Q. 18.

(Testimony of Fred A. Gardner.)

A. We did not see the combustion chambers referred to in item No. 18, but being thoroughly familiar with this class of work—I personally have done this particular kind of work in years gone by—and having it explained to us by Mr. Kinsman, we figured on it as an extra.

Q. What did Mr. Kinsman explain?

A. I must admit that I do not remember the details of his explanation in regard to that cleaning, other than it was done in the usual way, and he knowing me personally assumed I would be familiar with what the cleaning of the combustion chambers would be. I think I asked him if there was a particularly heavy scale in this chamber at the present time. As I recall it now he said there was nothing unusual.

Q. Was there anything lacking in your inspection or your consideration of that item that made it difficult to figure on the value of the work set out in the item? A. Not at all.

Q. Pass to No. 19.

A. We saw this, and figured on it as an extra.

Q. 20.

A. We saw the lagging on the main boilers and had an opportunity to examine it with the view to ascertaining the manner in which it was applied. The lagging having been painted it was impossible to see the exact extent of the repairs probably made, but we figured on this item as an extra with the assurance from Mr. Kinsman that there was not more than 180 square feet treated; though in his opinion

(Testimony of Fred A. Gardner.)

the extent [1923—1835] of the repairs were much less than this we allowed for, as I recall at present about 180 square feet.

Q. Pass to 21.

A. We saw and figured on this as an extra.

Q. 22.

A. We did not see these check-valves and discs and seat though we saw the body of these valves from which ordinarily one would be able to estimate the value of checks, discs and seats, and in addition to this general knowledge I think we were shown some spares. I think also in questioning Mr. Kinsman as to the construction of the valves themselves I sketched one showing a stem which he corrected by saying they were constructed with four guide wings, rather than one central stem.

Q. Four guide wings? A. Wings, yes.

Q. Was there anything in that item lacking in order to make an intelligent estimate on the value of the work? A. Nothing that I can recall.

Q. Was it figured on as an extra?

A. It was figured on as an extra.

Q. Pass to 23.

A. We did not see the valve-discs. We did see the yoke, stem and nut. We did not see the valve-seat, though we saw the body of the valves, and our general knowledge of valves of this description enabled us to figure on it intelligently. It was figured on as an extra.

Q. Pass to 24.

A. We saw the strap-hangers for feed-lines, and

(Testimony of Fred A. Gardner.)

figured on them as an extra. We made diligent search for the bottom blow-hangers, but were unable to find any, and were informed by Mr. Kinsman that none had been supplied.

Q. If they had been on the ship would you have been able to have seen them?

A. There would have been no difficulty in seeing them. [1924—1836]

Q. How did you figure on the hangers on the feed-lines? A. As an extra.

Q. Pass to 25.

A. We did not see the actual holes. We saw where gauge-cocks had been fitted, and assumed that the work had been done, and figured on it as an extra.

Q. Pass to 26.

A. We saw the shaft, and I think the handle of this damper, but as one of the schedules contained the item for furnishing and installing a stack, we did not figure on this as an extra.

Q. Why not?

A. As we considered that it was included in part of Schedule No. 9 calling for the construction of a new stack, removal of old and installing new.

Q. Pass to 27.

A. We saw the stanchion referred to, and we considered that it was a part of the installation of stack referred to in Schedule 9, in that portion of Schedule 9 to the amount of \$900.

Q. Schedule 9 attached to the libel?

A. Attached to the libel.

(Testimony of Fred A. Gardner.)

Q. Pass to No. 28.

A. We saw these letters and estimated on them as an extra.

Mr. McCLANAHAN.—Mr. Gardner, because of his engagements, has requested an adjournment of this hearing at noon. I have gone over the matter with him, and it will be greatly to his convenience if we reconvene on next Tuesday morning.

Mr. FRANK.—This is your last witness, is it?

Mr. McCLANAHAN.—I probably will have one very short one, maybe two; but they will both be very short.

Mr. FRANK.—All right.

Mr. McCLANAHAN.—Q. Now, pass to No. 29.

A. In reference to item No. 29, we saw this work and did not [1925—1837] estimate on it as an extra, as we considered it covered by the installation of smoke-stack in Schedule No. 9 calling for the construction and installation of a smokestack for \$900.

Q. Pass to 30a.

A. We saw this ladder and figured on it as an extra.

Q. 30b.

A. We saw it and figured on it as an extra.

Q. 31. A. Saw it, and figured on it as an extra.

Q. 32.

A. We were never able to find this particular broken beam, but from the dimensions telephoned to my office, we estimated on it as an extra.

Q. Who telephoned to you?

A. I don't know. Someone representing him-

(Testimony of Fred A. Gardner.)

self as being in connection with the Matson Navigation Company. I am under the impression at the present time it was Captain Saunders.

Q. After receiving this telephone message, did you recognize where the patch was made?

A. No, sir, we never really located this patch, though it seems to me at the present time we were shown a patch approximately of the dimensions given on a beam somewhere on the ship, but I don't recall just where it was.

Q. State whether you had or did not have sufficient information given you to enable you to make an intelligent bid on that work.

A. I think the information as given was sufficient so far as that was concerned.

Q. State whether you had looked at the beams and knew their general construction.

A. Very carefully. I have gone over these beams a number of times trying to locate this patch.

Q. Did any information that you received later about the patch enable you to make an intelligent estimate in connection with [1926—1838] what you had seen?

A. That was subsequent to April 29th. I think we got some information from Mr. Klitgaard to the effect that there was such a patch. Just where he said I do not remember at the present time. It was practically in line with the information we had previously received relative to the general dimensions of the patch.

(Testimony of Fred A. Gardner.)

Q. That hardly answers my question. Read it, Mr. Reporter.

(The Reporter reads the question.)

A. I think had we paid careful attention to the description given by Mr. Klitgaard, we might have been able at that time to have made an intelligent estimate very easily, and I think we did.

Q. You think you did what?

A. Make an estimate at that time.

Q. That hardly answers my question. Read the question again, Mr. Reporter.

(The Reporter reads the question.)

A. I am pretty dense, but I suppose I will get it in my head pretty soon.

Q. That is, any information received after you had examined the beams and knew their construction?

A. That was taken into consideration in making that estimate naturally.

Q. Now, answer the question: did that added information make it possible for you to make an intelligent estimate? A. It did in my opinion.

Q. You figured on that as an extra?

A. We figured on that as an extra.

Q. That is 32? A. 32.

Q. Pass to 33.

A. We saw this work and figured on it as an extra. [1927—1839]

Q. 34.

A. We saw this work, and figured on it as an extra.

Q. 35.

A. Saw it, and figured on it as an extra.

(Testimony of Fred A. Gardner.)

Q. 36.

A. Saw it, and figured on it as an extra.

Q. 37.

A. Saw it, and figured on it as an extra.

Q. 38.

A. Saw it, and figured on it as an extra.

Q. 39.

A. We did not actually see the brass liner, but from sketches made and descriptions given by Mr. Kinsman, we were enabled to make an intelligent estimate of the value of this brass-liner. We figured on it as an extra.

Q. Would your general knowledge of the item be of any assistance to you in figuring on the matter without any statement from Mr. Kinsman?

A. Why, had I been sent to this vessel for the purpose of making an estimate, with the object in view of eventually bidding on the work, I doubt whether I would have asked Mr. Kinsman any questions in regard to it. I would have been guided entirely by my previous experience.

Mr. FRANK.—I think it would be well, Mr. McClanahan, unless you have some particular reason for it, to refrain from leading the witness, as you have been doing right along. I have made that suggestion frequently. I suppose you will pay the same attention to it as you have heretofore.

Mr. McCLANAHAN.—Q. Pass to 40.

A. We saw and figured on this work as an extra.

Q. 41.

A. We saw the roller chain leads referred to, and

(Testimony of Fred A. Gardner.)

could find no evidence of their having been raised, but in making a further examination we came to the conclusion that two rollers supporting the quadrant would necessarily have had to be raised, and we estimated on this instead of the rollers for chain lea ' and figured on it as an extra.

Q. 42.

A. We saw this work and figured on it as an extra. [1928—1840] I would like to correct my statement in regard to this. It may apply to others.

Q. In regard to what?

A. Item No. 42. We first figured on it without seeing it but later we checked up our figures after seeing it.

Q. 43. A. The same answer applies to 43.

Q. 44. A. The same answer applies to 44.

Q. 45.

A. We did not see the keyway in propeller-hub, and we did not figure on it at all. To the best of my recollection the propeller was to be made and installed as covered by the original specification, item 9.

Q. You did not figure on that as an extra because it belongs to item 9. Is that the idea?

A. That is the idea.

Q. Of what comparative value would that work be. Was it a large size item or a small one?

A. Keyway in propeller-hub. Ordinarily, quite a small item.

Q. Pass to 46.

A. We saw and figured on this as an extra.

(Testimony of Fred A. Gardner.)

Q. 47.

A. We saw this work and figured on it as an extra.

Q. 48.

A. We saw this and figured on it as an extra.

Q. 49.

A. We first figured on this work as an extra, without seeing it, and later saw it when the vessel was in drydock. We saw no occasion to change our original estimate.

Q. 50. A. The same remarks apply to 50.

Q. 51.

A. We estimated on 51 and 52 together as an extra. We saw the work as completed.

Q. 53.

A. We figured on this work without seeing [1929—1841] the propeller, but later saw it when the vessel was in dock, and saw no occasion to change our estimate.

Q. 54.

A. We saw this work and figured on it as an extra.

Q. 55.

A. We figured on the new material on this item as an extra, but considered that the removal and restoration to place was covered by item 9 of the original specifications.

Q. In what way covered by item 9?

A. In that it was necessary to remove this pipe as it directly extended over the shaft and put it back in place upon completion of the work.

Q. 56.

A. We saw this work and figured on it as an extra.

(Testimony of Fred A. Gardner.)

Q. 57.

A. We saw it and figured on it as an extra.

Q. 58.

A. We saw this work, and either under this heading or another referring to coffer-drains, which we interpreted as meaning cylinder-drains, we allowed certain changes as an extra. The remainder of the work we considered as being covered by item No. 9 of the original specifications.

Q. 59.

A. We considered this job in a general way which we saw as being chargeable to a part of Schedule No. 9, calling for the removal of old stack and installation of new, although upon receiving explanation from Mr. Kinsman to the effect that certain articles were furnished in addition to what might be covered by the removal and installation of a new stack; we figured on the same fittings as an extra; just what they are, I do not recall now.

Q. The fittings that were mentioned to you by Mr. Kinsman?

A. By Mr. Kinsman—were figured on as an extra.

[1930—1842]

Q. 60.

A. We saw this work and figured on it as an extra; that is, we saw a hole which we assumed had been enlarged.

Q. 61.

A. We saw this work and figured on it as an extra.

Q. 62.

A. We saw this bilge-pump body and considered

(Testimony of Fred A. Gardner.)

it was not necessary to remove it for the purpose of brazing a copper-pipe, but that it was necessary to remove it in connection with repairs specified in item No. 1 of the original specifications.

Q. Therefore you did not figure on it?

A. We did not figure on it as an extra.

Q. 63.

A. We saw this bonnet and figured on it as an extra.

Q. 64.

A. We saw this work and figured on it as an extra, although as I recall it at the present time we were in doubt as to whether binder-bolts had been treated as described, nevertheless the entire matter was treated as having been performed and figured on it as an extra.

Q. 65.

A. We did not see the air-pump floating top, but from sketches and descriptions furnished by Mr. Kinsman, and from our own general knowledge of air-pump construction we made an estimate which we considered an extra.

Q. Does that statement apply to the whole of the item, or to simply the floating-top of the item; in other words, is that the only thing of the item that you did not see?

A. We did not see the holding-lugs, and we did not see the bronze tap-bolts.

Q. So it does apply to the whole item?

A. We did see the flange of the air-pump—I beg pardon, we [1931—1843] did not see the flange of

(Testimony of Fred A. Gardner.)

the air-pump. It applies to the whole item.

Q. 66.

A. We did not see these bushings, but from our general knowledge of pump construction, and from information furnished and sketches made we made an estimate and considered it an extra.

Q. 67.

A. We saw the circulator-pump barrel from which we could form an intelligent estimate as to what the value of this work might be, but we considered an estimate unnecessary as in our opinion this work was covered by item No. 1 of the original specifications.

Q. 68.

A. We saw this work and figured on it as an extra.

Q. 69.

A. We saw this work and figured on it as an extra.

Q. 70.

A. We saw this work, and considered that the facing off of these coupling was covered by item No. 9 of the original specifications. We saw no evidence of the thrust-couplings having been turned down, although we made a careful examination of it. We were also informed that it had not been turned down.

Q. Had it been turned down would the items still belong to item No. 9 of the original specifications?

A. I think not.

Q. 71.

A. Practically the same remarks apply to 71 as already have been made in reference to item 70.

Q. 72.

(Testimony of Fred A. Gardner.)

A. We saw where these ribs had been chipped and holes drilled, and figured on it as an extra.

Q. 73.

A. We saw it and figured on it as an extra.

Q. 74.

A. We saw this work, and considered that it was covered by the original specifications item No. 9.

Q. 75.

A. We saw this shafting and considered the work here described was covered by item No. 9 of the original [1932—1844] specifications.

Q. 76.

A. While we did not see the holes, we saw the coupling bolts from which the size of the hole could be ascertained, and considered that it was covered by item No. 9 of the original specifications.

Q. 77.

A. We saw the coupling bolts and considered that the work of fitting and supplying was covered by item No. 9 of the original specifications.

Q. 78.

A. We saw this work and considered that the removal of same and restoring of it to original position was covered by item No. 9 of the original specifications, but as we were informed that brass fittings and pipe had been supplied being different from the original construction we made allowance for these brass fittings and pipes as compared with iron fittings.

Q. By making allowance you mean you figured those as extra?

(Testimony of Fred A. Gardner.)

A. We figured on that part as an extra.

Q. 79.

A. We first considered that this was covered by item No. 9, but to the best of my recollection at the present time we figured on this as an extra.

Q. What does I. W. P. mean?

A. It really means nothing so far as I know, but we interpreted it as meaning the "intermediate crank-pin."

Q. Pass to No. 80.

A. We considered the remetalling of these brasses made necessary by the trueing up of the intermediate crank-pin, and figured on it as an extra to the best of my recollection.

Q. Did you see it? A. We saw it.

Q. My question applies to No. 80?

A. We saw the pin and brasses.

Q. Pass to 81.

A. We saw these horseshoes and considered [1933—1845] the work as being covered by item No. 9 of the original specifications.

Q. 82.

A. We saw these binders and figured on the enlargement of handholes and holes plugged, as an extra. The remainder of the work we considered as being covered by the original specifications, item No. 9, I think.

Q. Please examine item No. 9 and make sure of your answer.

A. That is what I am doing. (After examination.) We charged it to item No. 9 as being made

(Testimony of Fred A. Gardner.)

necessary on account of the fitting of new shells to be supplied by the ship.

Q. 83.

A. We saw these holding-down bolts and considered that they were covered by item No. 9 of the original specifications.

Q. 84.

A. We did not see the high pressure and intermediate valve but from a general knowledge of the work entailed by cleaning and oiling valves of this description we were enabled to form an estimate.

Q. Was it figured on as an extra?

A. We figured on it as an extra, I think, to the best of my recollection.

Q. 85.

A. We saw this work, and figured on it as extra.

Q. 86.

A. We saw this work, and figured on it as extra.

Q. 87.

A. We saw this work, and figured on it as extra.

Q. 88.

A. We saw the low pressure piston follower, and figured on it as an extra.

Q. 89.

A. We interpreted "lug-thrust spare L. P. valve stem" as meaning "Lengthen low pressure valve stem," and as the lengthening of this valve stem was made necessary on account of the installation of balance-cylinder over the low pressure valve, we considered that it was covered by item No. 2 of the [1934—1846] original specifications.

(Testimony of Fred A. Gardner.)

Q. What part of item No. 2?

A. If not by item No. 2, covered at least by the original specifications in connection with the installation of a balance-cylinder.

Q. Will you please examine "Gardner Exhibit No. 1" and answer the question? A. It is item No. 2.

Q. That is, it is the compensation work?

A. Compensation work in item No. 2.

Q. Pass to No. 90.

A. The same remarks apply to 90.

Q. 91.

A. We saw these bolts, and although there was a doubt in the mind of Mr. Kinsman who pointed them to us, as to whether they had been renewed or not, we figured on them as an extra.

Q. 92.

A. We saw the intermediate valve-chest lower head, and where it had been drilled for an inch and a half drain-plug; although we did not see the holes in the ribs of this cover a description was given of the holes, and the size to the best of my recollection, and we figured on the item as an extra.

Q. 93.

A. We saw this and figured on it as an extra.

Q. 94.

A. We saw these parting pieces, and considered that they were covered by the original specifications.

Q. What part of the original specifications?

A. Item No. 5.

Q. Item No. 5 as it was originally, or as it was changed?

(Testimony of Fred A. Gardner.)

A. As it was changed in compensation for work not performed in connection with item No. 5. [1935—1847]

Q. Pass to No. 95.

A. There was some little discussion about this particular item. While at first we considered it was covered by item No. 5 of the original specifications, I think that we finally decided that as it was probably done for the purpose of altering the position of the valves, we figured on it as an extra.

Q. Did you see the work? A. We saw the work.

Q. 96.

A. We did not see this bushing, but from our general knowledge of neck-bushings as usually installed, and from the descriptions given and sketch made by Mr. Klitgaard, we figured on it as an extra.

Q. 97.

A. We saw these guide-brasses, and figured on them as extras.

Q. 98.

A. We saw this item, and figured on it as an extra.

Q. 99. A. The same remarks apply to 99.

Q. 100.

A. We saw the parting pieces, and figured on them as an extra.

Q. 101.

A. To the best of my recollection we figured on the repairs to these oil-cups as an extra, but the fitting which we interpreted as meaning the fitting them in place, we considered as having been covered by the original specifications.

(Testimony of Fred A. Gardner.)

Q. Did you see the oil-cups?

A. We saw the oil-cups.

Q. 102.

A. We saw them and figured on them as an extra.

Q. 103.

A. We saw this work, but upon inquiring of Mr. Kinsman as to whether this turning-engine had not been used in the dismantling and reassembling of the engines in connection with item No. 9, and being informed that it was so used, and that these straps and sheave had been damaged while being [1936—1848] so used, we considered that the work was covered by item No. 9 of the original specifications.

Q. And did not figure it?

A. We did not figure on it as an extra.

Q. 104.

A. We saw this work, and at first considered that it was entirely covered by item No. 9 of the original specifications, but upon being informed that the sizes of some of these set-screws might possibly have been changed, we figured on it as an extra—part of it as an extra.

Q. 105.

A. We saw this work, and figured on it as an extra.

Q. 106.

A. We saw this work, and either under this item or the other item referred to in my testimony relative to copper pipes—

Q. Item 58.

A. Item 58—we figured on certain changes and some jointing material, and also some bolts and nuts,

(Testimony of Fred A. Gardner.)

as I recall it now, that might have been necessary as an extra.

Q. And the balance of the item is what?

A. The balance of the item is covered by the original specifications in moving parts of the machinery and reassembling them.

Q. What do you understand "coffer-drains" to mean, used in item 106?

A. I had no knowledge up to a short time ago as to the exact meaning of "coffer-drains," as I had never heard the expression used before, but interpreted it as meaning "cylinder drains."

Q. And it was on "cylinder drains" that you made your estimate?

A. Yes, sir; cylinder and valve-chest drains.

Q. Mr. Gardner, please re-examine No. 58 in connection with [1937—1849] 106, and state whether there is a difference in the two items, or whether they are the same.

A. I consider that 58 refers to more than the coffer-drains as referred to in 106, but we might have made the estimate under either head.

Q. One is included in the other?

A. I considered that one is included in the other.

Q. Pass to 107. You may consider 107 and 108 together as the evidence shows that 107 is a part of the first expression found in 108, so that 107 should read "Supplied and fitted 1½ cross-nipple, 'etc.,' to drain on main steam line."

Mr. FRANK.—We object to that instruction to the witness. The witness is testifying not as to what the

(Testimony of Fred A. Gardner.)

evidence shows, but as to what he did at that time. It is immaterial what the evidence has shown since.

Mr. McCLANAHAN.—Q. You may still do as I suggest.

Mr. FRANK—If he is constructing his evidence now to meet the evidence, of course, we want to know it.

Mr. McCLANAHAN.—Q. You may still do as I suggest. Consider those two items together.

A. I will follow your instructions, although I consider it unnecessary to do so, as in making our estimate we did consider items 107 and 108 as being necessarily taken together, as without the assistance of 108, 107 would be incomplete.

Q. How should 107 read then?

A. We interpreted it as reading "Supplied and fitted 11½ brass-nipple and Lunkenheimer globe valve to drain on main steam line."

Q. Now, will you take that item up and tell us whether you saw it?

A. We saw that, and figured on it as an extra.

Q. Now, will you consider the balance of 108?
[1938—1850]

A. As we were informed that the drains on water service to guides were originally of iron, we figured as an extra the difference between iron and brass as found to be fitted. The reconstruction of all water service lines in the engine-room and shaft-alley we considered as being covered by item No. 9 of the original specifications, in that these drains and water service lines would have had to be removed neces-

(Testimony of Fred A. Gardner.)

sarily, and restored to position in connection with the work on item No. 9 of the original specifications.

Q. Did you see the work in 107 and 108?

A. We saw this work.

Mr. McCLANAHAN.—Now, we will have to adjourn.

Mr. FRANK.—Why cannot we go on and finish the whole list? There are only a few left.

Mr. McCLANAHAN.—It will take at least three-quarters of an hour.

Mr. FRANK.—Inasmuch as I am allowing you some concession you ought at least to make a concession of another hour to me.

Mr. McCLANAHAN.—I do not know what concession you have allowed me.

Mr. FRANK.—I have consented to this going over until Tuesday next.

Mr. McCLANAHAN.—To accommodate the witness.

Mr. FRANK.—It is your accommodation, not mine. I do not like the manner in which you assume control of every detail of this examination.

Mr. McCLANAHAN.—I am very sorry if my manner is at all offensive to you; it is not intentional.

Mr. FRANK.—It would be offensive to anybody. I think [1939—1851] I am entitled to that concession at this time, that you finish this up. The witness is going to be away. You still refuse to do it?

Mr. McCLANAHAN.—Yes.

Mr. FRANK.—Very well, Mr. McClanahan. I suppose I am at your mercy.

(Testimony of Fred A. Gardner.)

Mr. McCLANAHAN.—I do not want you to say that, Mr. Frank.

Mr. FRANK.—I know you do not.

(An adjournment was here taken until Tuesday, November 14th, 1911, at 10 A. M.) [1940—1852]

Tuesday, November 14th, 1911.

(An adjournment is taken until Saturday, November 18th, 1911, at the request of Mr. McClanahan.) [1941—1853]

Saturday, November 18th, 1911.

Mr. McCLANAHAN.—Mr. Reporter, let the record show that sometime during the middle of the past week Mr. Frank's office was requested to continue the hearing of this matter on Friday, November 17th. Mr. McClanahan's engagements at that time permitting of such a hearing.

Mr. FRANK.—And Mr. Frank's engagements at that time not permitting, it was not acceded to. That is the story.

Mr. McCLANAHAN.—Hardly the whole story. Mr. Frank's office, I am informed, was advised of this request, and since being so advised we have not heard from Mr. Frank's office until Friday morning, when Mr. Frank informed me that he had told his son, who conveyed the message to him about the hearing for Friday morning, that it would not be convenient for him, but his son failed to advise any of the interested parties of that statement.

Mr. FRANK.—That is the most ridiculous thing I ever heard of, to put that in the record.

[Testimony of C. C. Kinsman, for Respondent
(Recalled).]

C. O. KINSMAN, recalled for the respondent.

Mr. McCLANAHAN.—Q. Mr. Kinsman, you have read your evidence given in this case, have you?

A. Yes, sir.

Q. Is there a correction you wish to make in it?

A. Yes, sir.

Q. What is it?

A. On page 1559 I gave the following answer in reply to a question with reference to testing the crank-shaft. I answered that question as follows: “And I want to modify my answer to the other, that an absolute test of the [1942—1854] truth of that shaft could not be got between the centers of a lathe.” I meant to say, “In the manner described in the specifications,” in addition to that answer.

Q. Mr. Kinsman, at any time during the visits of either Gardner or Heynemann to the ship, did you or did you not tell them of the method used in cleaning the tank-top, how it was cleaned?

A. I described it to Gardner. I don’t know whether Heynemann was present or not.

Q. Did you at any time tell either Gardner or Heynemann during their visits to the ship the amount of scaling done on the boilers? A. Yes, sir.

Cross-examination.

Mr. FRANK.—Q. Why did you not go off on the “Hilonian,” Mr. Kinsman, as it was suggested you were going when the last examination was concluded?

Mr. McCLANAHAN.—I object to that as not

(Testimony of C. C. Kinsman.)

proper cross-examination.

A. I would have had to have had an air-ship.

Mr. FRANK.—Let us not have any trivialities.

A. The ship was at sea.

Mr. McCLANAHAN.—The ship has not been back.

Mr. FRANK.—Q. When did she go to sea?

A. I forget the date; she is due back here shortly. It is only a 35-day trip.

Q. How many days had she gone to sea before that examination was concluded?

Mr. McCLANAHAN.—I object to that as immaterial and not proper cross-examination.

A. A couple of days, I think—two or three days. I believe I can give you the exact number of days. It was on the Friday [1943—1855] I think, previous to my testifying, and that was on Tuesday.

Redirect Examination.

Mr. McCLANAHAN.—Q. There is one more question that I should like to ask you, Mr. Kinsman. Were the litening holes in the athwartship plates cut in place, or off the ship? A. In place.

Q. Did you or did you not convey that information to either Gardner or Heynemann?

A. To the best of my recollection I did, to Gardner.

Recross-examination.

Mr. FRANK.—Q. What was the purpose of your going over this testimony since your examination, Mr. Kinsman? A. My testimony?

Q. Read the question to him, Mr. Reporter.

(The Reporter reads the question.)

(Testimony of C. C. Kinsman.)

A. Assuming that the question means my testimony, to find out if there were any corrections to be made, or errors in it.

Q. Did you go over the rest of the testimony of any of the other witnesses? A. I read a little of it.

Q. Whose testimony?

A. At times I suppose I glanced at most of the testimony, that is, of most of the witnesses.

Q. You know what I mean, Mr. Kinsman. Did you read over the testimony of any other of the witnesses, not glanced over it, but read over the testimony of any other of the witnesses since your examination?

Mr. McCLANAHAN.—I object to the question as immaterial.

A. At no time during the case have I read any witness' complete testimony.

Q. Then have certain parts of the testimony been pointed out to you to be read by you?

A. No, sir. [1944—1856]

Q. How were they indicated to you?

Mr. McCLANAHAN.—I object to that question. It carries the inference that there was an indication of testimony to be read, and there is no such evidence.

A. I just casually picked up these copies at times merely to pass away time.

Q. You mean here in this office? A. Yes, sir.

Q. What brought you here?

A. I was called here for various purposes.

Q. What purposes were you called here for?

(Testimony of C. C. Kinsman.)

Mr. McCLANAHAN.—I object to the question as immaterial.

A. Sometimes to answer questions; sometimes I don't know what I was called for.

Mr. FRANK.—Q. You were called here, then, to answer questions concerning the testimony that was to be taken after yours was concluded; is that right?

A. I don't know.

Q. Why don't you know?

A. There have been times when I have been told to come up here, and I never knew the purpose.

Q. But when you got here you found out the purpose, didn't you? What did you do when you got here?

A. Sometimes there was nothing done at all.

Q. When there was something done, what was done?

Mr. McCLANAHAN.—What is the object of this examination, Mr. Frank? Will you state it?

Mr. FRANK.—I do not think so; not at the present time not while I am cross-examining the witness.

Mr. McCLANAHAN.—In my view of the matter, it is not cross-examination. I was wondering whether you could make it such by any explanation.

Mr. FRANK.—Q. Answer the question. [1945—1857]

A. Read the question again, please. (The Reporter reads the question.) I was asked if I told the experts certain things.

Q. What things, for instance?

A. Regarding the cleaning of this tank, No. 4 tank.

(Testimony of C. C. Kinsman.)

Q. Is that all?

A. I suppose there were numerous items. I don't remember just what particular ones.

Q. Is that all that you were asked, what you told the experts? Weren't you asked other things as to the conditions?

A. That would be in reference to the conditions; pointing out different items.

Q. Who was present at those conferences?

A. There were different people here at different times.

Q. Well, mention the people. Whether they were here at different times or all at the same time, with whom you had those conferences.

Mr. McCLANAHAN.—What conferences do you refer to, Mr. Frank?

Mr. FRANK.—To the ones he testified to.

Mr. McCLANAHAN.—He has referred to visits to this office, but I do not know that he referred to conferences at all.

Mr. FRANK.—Q. Go on, Mr. Kinsman.

A. You might say everyone connected with the cause, except Captain Matson, when I was here.

Q. Since your examination in this case?

A. I think so.

Q. Have you and Mr. Gardner gone over the matter together since your examination in this case?

A. I have talked with Gardner about the case, yes.

Q. Here in this office? A. Yes, sir.

Q. When? A. Since I testified. [1946—1858]

Q. Since you have testified? A. Yes, sir.

(Testimony of C. C. Kinsman.)

Q. You have done so within the last 10 days, have you not? A. Yes, sir, I think I have.

Q. Frequently? A. Twice at the outside.

Q. Gone over the details with him?

A. Yes, sir; I have gone over some of them.

Q. Well, what details did you go over with him?

A. Why, I think the cleaning of that No. 4 tank for one. Probably others. I don't remember just now what the conversation was.

Q. You went carefully over the whole business, did you not, with him so as to refresh his recollection as much as you could on everything that you thought material or that he thought material?

A. I will not say the whole thing; no.

Q. That is the best answer you can give?

A. Yes, sir, it took us many days to go over the whole thing.

Q. Initially?

A. I mean when we went over it in the first place.

Q. That is what you mean? A. Yes, sir.

[Testimony of Charles W. Saunders, for Respondent (Recalled).]

CHARLES W. SAUNDERS, recalled for the respondent.

Mr. McCLANAHAN.—Q. Captain Saunders, have you read over your testimony given in this case?

A. Yes, sir.

Q. Do you wish to make a correction in regard to the same? A. I wish to make one correction.

Q. What is it?

(Testimony of Charles W. Saunders.)

A. In the testimony where I said that the conversation in regard to the tank-top took place at the same time as the conversation in regard to the smoke-stack. After an examination of the time-book I am convinced that I made a [1947—1859] mistake as to that date. The tank-top conversation took place at least a week before that, on the occasion of Captain Matson's previous visit.

Mr. McCLANAHAN.—That is all.

Cross-examination.

Mr. FRANK.—Q. What means did you take, Captain Saunders, to correct your recollection of that?

A. Simply by giving the matter serious thought.

Q. Is that all you did?

A. And studying the time-book, as I said.

Q. Studying what time-book?

A. The dates in the time-book.

Q. What time-book do you refer to?

A. The time-book in evidence.

Q. You mean Putzar's time-book?

A. I mean that time-book, whatever it was.

Q. What did you find in Putzar's time-book that led you to believe you were in error?

A. That the work on the tank-top commenced about the 2d of September.

Q. Who called your attention to that?

A. I don't recollect now just who it was.

Q. When you left here, did you not consider that you were done with your testimony?

A. I hoped so.

(Testimony of Charles W. Saunders.)

Q. And did you not pass it away out of your mind, any further consideration of it?

A. I gave it very little more thought at the time.

Q. Then somebody called your attention to this and told you you had probably made a mistake about it; is that right?

A. They called my attention to that and asked me if I had not made a mistake. [1948—1860]

Q. Who called your attention to it?

A. I don't recollect.

Q. How long ago was it that your attention was called to it? A. Probably a week or so ago.

Q. You don't recollect who called your attention to it?

A. I could not swear who called my attention to it.

Q. That is remarkable, Captain. Your recollection is very clear on everything in this case that happened 2 or 3 years ago, and now you have no recollection who talked to you a week ago on this subject.

A. I could not swear to the man; it was possibly Mr. Diericx or possibly Mr. McClanahan.

Q. What creates that doubt in your mind, Captain Saunders?

A. Because we were together at the time.

Q. The three of you together? A. Yes, sir.

Q. What were you doing together?

A. Well, I could not exactly tell that, Mr. Frank.

Q. You could not?

A. I was with them more by accident than anything else.

Q. Where at?

(Testimony of Charles W. Saunders.)

A. I think I came up here with Mr. Diericx. I had asked Mr. Diericx if I could not look over my testimony and that was the time I simply came up here to read over my testimony.

Q. What was your purpose in coming up here to read your testimony? A. Natural interest.

Q. Natural interest? A. Certainly.

Q. And then they pointed out to you this discrepancy, is that so? A. I think it was at that time.

Q. So you have no recollection of the conversation itself, but you are fixing a time now argumentatively, is that not right; because you find in the time-book certain work was done at a specific time you conclude the conversation must have been [1949—1861] at some earlier date than you originally testified to? A. Certainly.

[Testimony of Fred A. Gardner, for Respondent (Recalled).]

FRED A. GARDNER, recalled, direct examination resumed:

Mr. McCLANAHAN.—Q. Mr. Gardner, will you please examine No. 109 of “Kinsman Exhibit No. 2” and state whether you saw or did not see that matter, and whether it belongs to the specifications, or to the minor contracts, or whether you figured on it as an extra.

A. We saw this wrench and figured on it as an extra.

Q. 110. A. Saw it and figured on it as an extra.

Q. 111. A. Saw it and figured on it as an extra.

(Testimony of Fred A. Gardner.)

Q. 112. A. Saw it and figured on it as an extra.

Q. 113. A. Saw it and figured on it as an extra.

Q. 114.

A. We saw these boards and gauges and figured on them as an extra, with the exception of one ammonia-gauge, to the best of my recollection, which we did not figure on.

Q. 115.

A. We saw this and figured on it as an extra.

Q. 116.

A. Saw this and figured on it as an extra.

Q. 117.

A. We did not see the actual brass valve seats and discs, but from our general knowledge of valves of this description and from information given by Mr. Kinsman and sketches supplied we were enabled to make an intelligent estimate, which we figured on as an extra.

Q. 118.

A. Saw this and figured on it as an extra.

Q. 119.

A. Saw this and figured on it as an extra.

Q. 120.

A. We saw this work and figured on it as an extra. Our attention was called to the fact that these had been [1950—1862] changed from one location on the bulkheads to another, I think from the star-board side to the after end of the thrust recess, to the best of my recollection.

Q. 121.

A. To the best of my recollection we saw this work

(Testimony of Fred A. Gardner.)

and figured on it as an extra.

Q. 122.

A. We interpreted this as meaning two strong backs instead of strove backs. We saw them and figured on them as extras.

Q. 123a.

A. We saw these holes and figured on them as extras.

Q. 123b.

A. We saw this patch and figured on it as an extra.

Q. 124.

A. We saw this work and figured on it as an extra.

Q. 125.

A. We considered that this work was chargeable to item No. 9 of the original specifications, in that it would be necessary to remove these heads and possibly renew the jointing materials.

Q. 126.

A. We saw this work and figured on it as an extra.

Q. 127.

A. We were never able to find any drawings and sketches, and therefore did not figure on it as an extra.

Q. 128.

A. We saw this air-pump body and condenser, and while we did not actually see the joints and faces where joints were made, we considered that it was chargeable to item No. 1 of the original specifications.

Q. 129.

A. We saw this balance-cylinder, but did not see

(Testimony of Fred A. Gardner.)

the piston and bull-ring, but this being a common attachment in connection with the low pressure valves to act as a counter-balance, had it been necessary we should have been able to [1951—1863] figure on it, but we considered it was chargeable to item No. 2 of the specifications in the compensation work.

Q. 130.

A. We did not see the face where chipped nor did we see the square washer or locking-nut on the valve, though we did see a spare washer and nut, and the spare valve-stem that had been lengthened. We considered that this work was chargeable to item No. 2 of the original specifications.

Mr. FRANK.—Q. Let me interrupt you for one moment, Mr. Gardner. You are referring, now, to the instructions that were given you by Mr. McClanahan and Mr. Diericx, to make that answer, are you not?

A. No, sir, I am depending upon my recollection assisted by this paper, the first part of this specification which describes the work.

Q. You are following now the instructions which were given to you by Mr. McClanahan and Mr. Dierick?

Mr. McCLANAHAN.—I object to that question upon the ground that there is no such paper before the witness. “Gardner Exhibit No. 1” is before the witness.

Mr. FRANK.—Q. That is the paper you referred to, did you not?

A. This paper was given to me at the beginning

(Testimony of Fred A. Gardner.)

of this work for the purpose of assisting me to determine what had been done, and later to examine the work as actually having been done.

Q. You are using that paper now for the purpose of your present testimony, and your hesitancy, your correction was due to the fact that you turned to consult that paper. Is that not the fact?

A. My hesitancy was due to the fact that I did not remember which particular number to refer to [1952—1864] though I have a clear recollection of this work having been done and how it was done and so figured on it. I simply refer to this to refresh my recollection as to the number of the item. I could say the general specifications if you prefer it without referring to it.

Q. By "this" you mean Exhibit No. 1 to which I am referring? A. Yes, sir.

Mr. McCLANAHAN.—Are you through with your cross-examination, Mr. Frank?

Mr. FRANK.—Yes.

Mr. McCLANAHAN.—Q. I now ask you to answer the question as to items 131, and in connection with that I will suggest to you that if you can refresh your memory by referring to any paper in evidence in this case you may do so.

A. We saw this work and considered that it was covered by item No. 4 of the original specifications as compensation work, though at the present time I am inclined to think that we allowed the Challenge metal as an extra.

Q. The Challenge metal for what?

(Testimony of Fred A. Gardner.)

A. The Challenge metal for the shoes.

Q. For the new shoes?

A. For the new shoes. Of course I may be mistaken in regard to this, as we may have made several estimates at various times, and looked at these various questions from different standpoints, and I could see no occasion for really charging this Challenge metal as an extra, but to the best of my recollection and belief Mr. Kinsman informed us that there had been an agreement to the effect that they would allow them for the Challenge metal. I do not recall just at what time this was now.

Q. Can you state more definitely whether you did or did not [1953—1865] make an allowance for the Challenge metal.

A. By referring to what I believe to be our detailed estimate in regard to this case, I see no allowance for the Challenge metal on this estimate, although in reconsidering this estimate as a whole we made certain allowances and deductions, and I think this particular item came under that head.

Q. Reconsidered since the letter of April 29th?

A. Reconsidered since the letter of April 29th.

Mr. FRANK.—Q. While you are on that point, if you did, point it out.

Mr. McCLANAHAN.—I object, Mr. Frank, to your interrupting my examination of this witness. At the proper time you will have your turn.

Mr. FRANK.—The witness says he thinks so. That may be construed that he does or does not.

Mr. McCLANAHAN.—You can make what you

(Testimony of Fred A. Gardner.)

choose of this at the proper time.

Mr. FRANK.—If you want to extend this examination you are perfectly welcome to do it.

Mr. McCLANAHAN.—All right.

Q. No. 132, Mr. Gardner?

A. We saw this work and considered that it was covered by item No. 5 of the original specifications as compensation work. This is another item that has been the subject of consideration since the estimate of April the 29th, and as this is compensation work, or rather although this is compensation work, and we could see no reason for allowing bronze or Challenge metal, we did allow for bronze and Challenge metal owing to the fact that Mr. Klitgaard, I think it was, stated that he had agreed to pay for the Challenge metal in connection with this work, [1954—1866] also the bronze.

Q. 133.

A. We saw this work and considered that it was covered by item No. 5 of the original specifications.

Q. 134.

A. We saw this cylinder and considered that the work was covered by item No. 6 of the original specifications.

Q. 135.

A. We saw this patch and considered that it was covered by item No. 7 of the original specifications as compensation work.

Q. 136.

A. We saw this coupling and considered that the

(Testimony of Fred A. Gardner.)

work was covered by item No. 8 of the original specifications.

Q. 137.

A. We saw this crank-shaft and considered that the work was covered by item No. 9 of the original specifications.

Q. 138.

A. We saw this work and considered that it was covered by item No. 10 of the original specifications. Although we had not seen this work at the time of sending you our estimate under date of April 29th, we have since seen it.

Q. 139.

A. We have seen these valves and strainers since April 29th, and we considered that they were covered by item No. 10 of the original specifications.

Q. 140.

A. We saw this work and considered that it was covered by item No. 11 of the original specifications.

Q. Since the letter of April 29th, which contains your original estimate, have you or have you not, in conjunction with Mr. Heynemann, reconsidered any of the items contained in the 140 items which you have just gone over?

A. We reconsidered all of the items that we had not been able to see at the time of our estimate of April 29th. We made certain allowances for what we considered possibly high, or low estimates, and we made corrections accordingly, or rather contemplated [1955—1867] making corrections, but finding that the balance to the best of my recollection at

(Testimony of Fred A. Gardner.)

the present time was only a matter of some \$38, or something less than \$50, I don't remember the exact amount, we decided to make no change in our original estimate.

Q. Since your original estimate of April 29th, have you, aside from seeing work that you had not seen at that time, received information relative to items which you had not when you made your original estimate?

A. Read that question please, Mr. Reporter. (The Reporter reads the question.) Yes, we had some conversation with Mr. Klitgaard, who informed us that we had not been just in some cases to the United Engineering Works, in the manner of not allowing them certain material which he stated he had agreed should be paid for as an extra.

Q. If there are differences in the testimony which you have given as compared with the matter contained in Heynemann Exhibit No. 4, relative to your action in allowing this or that item as an extra, or not allowing it, have you any explanation to make of that difference, or those differences?

A. To the best of my knowledge and belief those differences are covered by the reconsideration of the estimate previously referred to.

Q. State whether or not after your final conference with Mr. Heynemann, you and he were in accord as to all of the items contained in "Kinsman Exhibit No. 2."

A. To the best of my knowledge and belief we were.

(Testimony of Fred A. Gardner.)

Q. If there are differences relative to those items between your testimony and Mr. Heynemann's how do you account for [1956—1868] that?

A. As I said before, we reconsidered our estimate, and have estimated on it at different times, and it is possible that one or the other's memory may not be absolutely reliable, and this late date I can see there is no reason for it casting any reflection on the estimate made on April 29th, at which time we had all the information necessary for making this estimate.

Mr. FRANK.—Counsel for defendant, aren't you?

A. I do not quite understand you, but I am pretty dense.

Mr. McCLANAHAN.—I must make the same criticism of counsel's remark, I do not understand it.

Q. Mr. Gardner, will you turn to item No. 79 of "Kinsman Exhibit No. 2." Mr. Heynemann says that that item belongs to item No. 9 of the specifications. You have stated that it was figured on as an extra. What have you got to say with reference to the conflict in your testimony?

A. Relative to that particular item and the one following, No. 80, it is really my honest opinion and belief at the present time that the figures in connection with that estimate were entered in the wrong column.

Q. What column do you refer to?

A. I refer to the column on "Heynemann Exhibit 4." Of course I do not know that to be the fact, but to the best of my knowledge and belief we figured on that as an extra.

(Testimony of Fred A. Gardner.)

Q. That is more than an answer to my question. My question referred to the conflict between your testimony and the testimony of Mr. Heynemann, he having stated that it was a part of item No. 9 of the specifications, and you having stated it was an extra. Do I understand you to say that you believe yourself to be right in that matter?

A. I do. [1957—1869]

Q. Turn to item No. 96. Mr. Heynemann has stated that that belonged to the second specification, specification No. 2, and you have stated that it was an extra. What have you to say with reference to that conflict?

A. I am inclined to think that Mr. Heynemann's memory in connection with that is better than mine. I remember that there was considerable discussion and lack of decision on our part at the time as to where it was correctly chargeable. I think it was finally considered to be covered as testified to by Mr. Heynemann.

Q. And that your testimony is incorrect in regard to that item?

A. That my testimony is incorrect.

Q. I call your attention to item No. 131, where you have expressed some doubt as to whether Challenge metal was figured on by you as an extra. Was that matter discussed by you and Mr. Heynemann?

A. It was.

Q. And you simply cannot remember whether you allowed it as an extra?

A. I don't remember whether we allowed it as an

(Testimony of Fred A. Gardner.)

extra or not.

Q. If Mr. Heynemann says it was allowed as an extra, you would not want to dispute that?

Mr. FRANK.—That is too palpably bad, Mr. McClanahan.

A. I would have to conceive that his memory is quite as good as my own.

Mr. McCLANAHAN.—Q. Mr. Heynemann has stated in his evidence at page 1,657, that the H. P. Eccentric straps were remetalled; what have you got to say with reference to that statement?

A. I am inclined to think that Mr. Heynemann is mistaken in regard to the high pressure eccentric straps being remetalled. I have no recollection of seeing that they had [1958—1870] been remetalled.

Q. Mr. Gardner, was it possible for you to know from an inspection of this work whether or not it was repair work?

A. It was very evident that it was repair work, taking the work generally.

Q. I call your attention to Schedule 2 of the libel and ask you whether in making your estimate you made an allowance for that schedule, making your estimate of the value of all the work performed by the United Engineering Works.

A. I would not be prepared to answer that question without referring to the estimate submitted to you on the date of April the 29th.

Q. Don't you know now from memory what you did with those minor schedules?

A. There were some of them, just which ones they

(Testimony of Fred A. Gardner.)

are I don't recall at the present time, that we were under the impression had been paid.

Q. You mean on the date of April 29th?

A. On the date of April 29th.

Q. Have you since been told differently?

A. I have since been informed that they have not been paid.

Q. Since then you have made an estimate on the value of the entire bill of the United?

A. Yes, sir.

Q. Have you included Schedule 2 in that estimate?

Mr. FRANK.—Q. What is that that you are consulting, Mr. Gardner?

A. This is a recapitulation of our estimate under date of April 29th.

Q. Is it an exhibit in this case at all?

A. I really don't know, sir.

Mr. McCLANAHAN.—Q. What is the answer to the question? [1959—1871]

Mr. FRANK.—I am objecting to the witness using a paper handed to him by counsel for the purpose of enabling him to answer the question.

Mr. McCLANAHAN.—Q. Do not look at the paper, Mr. Gardner.

Mr. FRANK.—He has looked at it now thoroughly sufficiently, I suppose.

Mr. McCLANAHAN.—Read the question, Mr. Reporter.

(The Reporter reads the question.)

A. To the best of my knowledge and belief we have.

(Testimony of Fred A. Gardner.)

Q. Mr. Gardner, I hand you "Libelant's Heyne-mann Exhibit No. 1," consisting of two letters, and ask you if the second letter, the one without the pencil notations on it, is your estimate of the value of the work done by the United Engineering Works on the "Hilonian" made on April 29th, 1910.

Mr. FRANK.—I do not think that is the situation, Mr. McClanahan. That last remark of yours does not fit in.

Mr. McCLANAHAN.—Read the question to the witness, Mr. Reporter.

(The Reporter reads the question.)

A. The amount of \$21,985.49 was our estimate of the value of the work performed by the United Engineering Works on the steamship "Hilonian," but at that time we were under the impression that three bills had already been paid.

Q. What bills were they?

A. And were not included in this estimate. These bills are one of September 24th, 1909, for miscellaneous material supplied, the amount of the bill being \$170.11. Another was a bill of October 30th, 1909, "One spare low-pressure piston follower" and "One spare set of high-pressure rings," the amount of the bill being \$226.35, and a bill under date of October 25th, 1909, [1960—1872] for sundry overhauling, the amount of the bill being \$540.61.

Q. Have you made an estimate since the estimate of April 29th, 1910?

A. No complete estimate; no.

Q. Can you state, now, the value of the work done

(Testimony of Fred A. Gardner.)

by the United Engineering Works to the "Hilsonian," the work being the work shown by Schedule 1 to 10 of the libel.

A. I now consider the value of this work to be, including the three bills above referred to, \$22,922.56.

Q. In arriving at that estimate, what did you do in making your figures with the original bid of the United Engineering Works covering the specifications shown by "Saunder's Exhibit No. 1"?

A. What did we do with the bid? I don't quite understand what you mean by that.

Q. Did you in that figure of twenty-two odd thousand dollars figure on the specification work?

A. No, sir. We took the original quotation, which was, to the best of my recollection, eleven thousand and odd dollars. I do not remember the exact amount.

Q. Can you refresh your memory by that letter (handing)? A. \$11,749.

Q. What did you do with that?

A. We took it as we stood as covering the original specifications.

Q. It is included, then, in your estimate of \$22,000 and odd? A. It is included in that estimate.

Q. What did you value the extra work which you have testified to as being contained in "Kinsman Exhibit No. 2"?

Mr. FRANK.—Is that not all in the exhibit in the report? Are you just reproducing it in the record from that report?

Mr. McCLANAHAN.—What is that?

(Testimony of Fred A. Gardner.)

Mr. FRANK.—Are you just reproducing that from the report, [1961—1873] having the witness read out from the report into the record?

Mr. McCLANAHAN.—It is quite evident what I am doing.

Mr. FRANK.—That is what it seems to me you are doing.

Mr. McCLANAHAN.—Q. Will you answer the question, Mr. Gardner?

A. I do not pretend to remember the figures.

Mr. FRANK.—Q. You are just simply reading the exhibit. Is that right?

A. I am refreshing my memory as to what my estimate was made on April 29th. The extra work was estimated to be worth \$6,280.50, plus an arbitrary allowance of \$2,000, for overtime, making a total estimate for extra work \$8,280.50.

Mr. McCLANAHAN.—Q. You have been asked to assume, Mr. Gardner, that the crank-shaft called for for removal in item No. 9 of the specifications was not removed. Did you or did you not make an allowance for its nonremoval from the bid of \$1,749?

A. That question refreshes my memory in connection with the bid of eleven thousand and odd dollars, that we did not use that as a whole, but considered that the nonremoval of the crank-shaft was worth \$1,398.25.

Q. With that exception you did use the bid of \$11,749?

A. With that exception we did use the bid of \$11,749.

(Testimony of Fred A. Gardner.)

Q. Your answer to my question is then that there was an allowance made for the nonremoval of the crank-shaft? A. There was.

Q. How much was it? A. \$1,389.25.

Mr. FRANK.—Q. You are not even reading correctly, Mr. Gardner.. A. I acknowledge the corn.

Mr. McCLANAHAN.—Q. What did you do with that \$1,398.25 in your estimate?

A. We considered it as a benefit to the Matson Navigation Company. [1962—1874]

Q. To the Matson Navigation Company?

A. Yes, sir.

Q. By “benefit” do you mean “credit”?

A. In other words, that the job should not have cost as much as \$1,398.25, due to the fact that the crank-shaft was not removed from the vessel.

Q. Did you give the Matson Navigation Company a benefit of anything else in your estimate of \$22,000 and odd?

A. I gave them credit for a certain amount of scrap valued at \$535.76.

Q. Mr. Gardner, what did you figure on the gudgeon work which was done on the “Hilonian” to be worth. Do you remember that?

A. I don’t remember the exact figure. It was in the neighborhood of \$2,100.

Q. Did you make any allowance in that figure for drydocking, extra drydocking of the ship?

A. Something over \$1,300, to the best of my recollection.

Q. Then you did make an allowance?

(Testimony of Fred A. Gardner.)

A. We did.

Q. Would it have been in your judgment practicable, Mr. Gardner, for the United Engineering Works to have kept track separately of the work which was performed under the original specifications, and the work performed under the minor contracts or schedules of the libel, and the work which you have designated as extra work?

A. I think with a reasonable number of timekeepers that it would have been practicable.

Q. In your opinion, would it have been difficult at all?

A. It would have been more difficult than to have kept it all under one number; not impossible to be done by any manner of means in my opinion.

Q. In your estimate of \$22,000 odd, did you make an allowance for the whole of Schedule 4 of the libel? Just answer the question yes or no, Mr. Gardner, so that we can make progress. [1963—1875]

A. I will have to refresh my memory.

Mr. FRANK.—Q. You are refreshing your memory again, Mr. Gardner, from the instructions given you by Mr. McClanahan, are you not?

A. I am not reading the instructions. I am reading the specifications. To the best of my recollection we did not allow for the work on thrust-collars, which we considered was covered by item No. 9 of the original specifications.

Mr. McCLANAHAN.—Q. What is the amount of the thrust-collar work as shown by Schedule No. 4 of the libel, which you did not allow?

(Testimony of Fred A. Gardner.)

A. \$146.88. We did not allow for the grinding off piston rod entirely, although we did allow for its being turned up, as in making our examination of the rod, the tool-marks were still in evidence, which led us to believe that the rod had not been ground.

Q. What item are you now referring to?

A. The item of \$50. "Grind off I. P. piston-rod as agreed."

Q. What deduction from the fifty-dollar item as testified to from Schedule 4, did you make in making your estimate of \$22,000 and odd?

A. To the best of my recollection about \$25.

Q. Turn to Schedule 9 of the libel. Will you state whether you, in your estimate of \$22,000 and odd, made an allowance for that entire bill?

A. We did not allow the entire amount of \$60, for enlarging casings. I really don't remember positively, but I think we did not allow for the item of \$180, as we considered it was covered by the making and installing of new smokestack for \$900.

Q. Mr. Gardner, will you give us now your opinion as to whether that item of \$180 is covered by the contract for the [1964—1876] making and installation of smokestack?

Mr. FRANK.—I object to the opinion of this witness on what is covered by a contract. The terms of the contract control. The trouble with this testimony is, you are not only trying to build up amounts but are trying to make contracts for us as well as decide the whole case. A. The bill reads—

Mr. McCLANAHAN.—Q. Let me interrupt you,

(Testimony of Fred A. Gardner.)

Mr. Gardner. The bill speaks for itself. We can have it read. Answer the question whether in your opinion that item of \$180 is properly a part of making and installing of a new smokestack?

A. I do not think it is a part of it.

Mr. FRANK.—You should not interrupt the witness, Mr. McClanahan, but allow him to make his own argument.

Mr. McCLANAHAN.—Q. State whether or no in your opinion the item of \$60 for enlarging the casing is a part of the making and installing of the new smokestack.

Mr. FRANK.—The same objection.

A. In my opinion it is not a part of making and installing the new smokestack.

Mr. FRANK.—Q. It is not? A. It is not.

Mr. McCLANAHAN.—Q. With those exceptions testified to relative to Schedule 4 and Schedule 9, state whether or no you included in your estimate of \$22,000 odd, the balance of Schedules 4 to 10, inclusive.

A. With the exceptions referred to we did include the balance of schedules 4 to 10 inclusive.

Q. Mr. Gardner, I will refer you to "Respondent Matson's Exhibit No. 1," and ask you whether the work called for on the tank-tops embodied in that proposal was greater or less [1965—1877] than the work which was actually performed on No. 4 tank-top on the "Hilonian"?

A. Our examination of the tank-top herein referred us led us to believe that the amount of work

(Testimony of Fred A. Gardner.)

here described was not performed.

Q. By "here" described you refer now to "Matson Exhibit No. 1"?

A. "Matson's Exhibit No. 1."

Q. That is, the Exhibit No. 1 calls for more work than was done? A. That is my opinion.

Q. Will you please take the specifications "Saunders Exhibit No. 1," calling your attention to the last sentence of specification 9? I will ask you whether or no item 45 of "Kinsman Exhibit 2" is or is not to be considered as a part of that requirement of the specification.

A. I consider that item No. 45 is covered by item No. 9 of the original specifications.

Q. Can you state, Mr. Gardner, whether the sum of \$11,749, which was the original bid of the United Engineering Works for the work scheduled under "Saunders Exhibit No. 1," is a fair and reasonable value for that work?

A. We considered it a fair and reasonable value for the work, in view of the fact that we ascertained that it was the lowest of two or more bids at the time the work was first contemplated.

Q. Is that the only basis for your belief?

A. And of our investigation of the work generally. We were of the opinion that it was a reasonable price.

Q. In this work which is covered by these various schedules of the libel was there any work done requiring the use of a bending-slab?

A. In connection with the schedules, did you say, 1 to 10?

(Testimony of Fred A. Gardner.)

Q. Yes.

A. The only thing that I recall that it might [1966—1878] have been used for was possibly in bending the angle-irons on the smokestack.

Q. I should like to have you make a little more definite answer, even if it requires a reinspection of all those exhibits. I want your opinion on that more positively. If you are now examining Schedule No. 1 I would suggest that "Kinsman Exhibit No. 2" is a copy of it, and it might be more easily examined. Having examined the schedules, Mr. Gardner, can you now make your answer a little more positive or definite?

A. I can see no occasion for the use of a bending-slab except in connection with the making of the smokestack, which is called for in Schedule 9.

Q. Would there be any use for the bending-slab in the angle-iron work on the tank-top margin?

A. I think not.

Q. What about the use of the slab on the angles and floor-gratings?

A. I think they might be gotten out without the use of a slab, although possibly a slab might have been used to a small extent.

Q. Might the same answer be made in regard to the angle-iron on the tank-top margin?

A. It might possibly have been used, but I hardly think it absolutely necessary.

Q. Taking the possible use of the bending-slab on the tank-top angle-iron, and on the floor-gratings and on the smokestack, would such use, if it had been

(Testimony of Fred A. Gardner.)

made, have consumed 79 hours of time if made properly?

A. I would hardly expect that it could have been used reasonably for that length of time in connection with the work that was done; in fact, I do not consider that it was necessary—absolutely necessary—for anything except the smokestack, [1967—1879] although it might have been used.

Q. What would be your approximation of the time necessarily used on the smokestack?

A. Surely not more than a day.

Q. How many hours would that be?

A. It could be done in a day of eight hours.

Q. And how long would its use have properly been made for the tank-top, if it had been used?

A. Probably not more than 4 or 5 hours, I should say.

Q. And for the floor-gratings, if it had been used?

A. The templates having been properly prepared I should not consider that they could have used it for more than a day and a half.

Q. By “a day and a half” you mean how many hours? A. Approximately 12 hours.

Mr. McCLANAHAN.—You may cross-examine, Mr. Frank.

Mr. FRANK.—Not to-day.

Mr. McCLANAHAN.—Cannot you commence his cross-examination?

Mr. FRANK.—There is no use in my commencing it; there is only a half an hour left this morning. Cross-examination does not consist in asking a great

(Testimony of Fred A. Gardner.)

many words and a great many questions.

Mr. McCLANAHAN.—I object to a continuance before the noon hour.

Mr. FRANK.—I will go on on Monday morning.

Mr. McCLANAHAN.—We cannot go on on Monday. I have an engagement at Redwood City in the Moore divorce case, which takes me there. I should like to go on to-day.

Mr. FRANK.—Tuesday, then. [1968—1880]

Mr. McCLANAHAN.—I cannot go on on Tuesday.

Mr. FRANK.—Wednesday.

Mr. McCLANAHAN.—I cannot go on on Wednesday, that I know of.

Mr. FRANK.—When can you go on?

Mr. McCLANAHAN.—I cannot tell you. You understand my situation. It seems to me you ought to use what time you can.

Mr. FRANK.—This half an hour could not profitably be used at this time in cross-examination.

Mr. McCLANAHAN.—Cannot you go on this afternoon?

Mr. FRANK.—Not to-day. The time could be used up, but that is not the object of cross-examination.

Mr. McCLANAHAN.—I am ready to go on now, and will be ready to go on this afternoon.

Mr. FRANK.—Oh, I know.

Mr. McCLANAHAN.—Do you decline to go on, Mr. Frank?

Mr. FRANK.—Yes, to-day.

(Testimony of Fred A. Gardner.)

Mr. McCLANAHAN.—I shall have to let you know when I can take up the matter again.

Mr. FRANK.—Let me know at least a day ahead so that I can prepare for it.

Mr. McCLANAHAN.—I will try and do that.

(An adjournment was here taken to a day to be hereafter set.) [1969—1881]

Wednesday, May 1, 1912.

FRED A. GARDNER, cross-examination.

Mr. FRANK.—Q. Mr. Gardner, what was the period of time, or between what dates were you at the Union Iron Works?

A. The dates that I was at the Union Iron Works, I could not tell you right now. You could get it from the Union Iron Works, I suppose.

Q. Couldn't you tell us within reasonable limits?

A. I could refer to my direct examination. I called attention to approximately the time, seven or eight years, I think, or something of that kind. I do not recall just exactly what I said at that time, but that was as near as I remembered it at that time.

Q. I am not asking you for that. I am asking you for the dates, between what dates was it that you were there? Between what dates? I am not asking you for the exact date, but approximately.

A. Let me see. I think it was in 1898 that I went there first, and in 1906 or 1907, I think, that I severed my connection with them—1907 I think it was.

Q. 1898, then, to about 1907. Is that right?

A. It is purely a matter of memory. I could look it up.

(Testimony of Fred A. Gardner.)

Q. Well, that is fairly accurate, isn't it?

A. I don't know. Not as accurate as it could be by looking up the absolute records of the Union Iron Works; surely not. It would be depending upon my memory.

Q. Well, have you any idea that that is materially wrong? A. No. [1970—1882]

Q. Who was the head of the works during that time? A. What do you mean?

Q. Just what I have asked you.

A. I think Mr. Henry Scott was president part of the time; he was chairman of the board part of the time. Mr. Forsyth was president of the works part of the time, and Mr. McGregor was president of the works part of the time.

Q. Forsyth was part of the time? A. Yes.

Q. McGregor was during the latter end?

A. Yes.

Q. Was there anybody in charge, direct charge of the mechanical department at that time? I am not speaking of the presidents; I mean the active man in the mechanical part of the work.

A. Well, I don't know exactly what you mean. There were several departments, of course; there is the hull department, drafting department, engineering department, and so forth.

Q. What was your office, if you had any, at that time?

A. Part of the time I was assistant to the engineer-in-chief, and part of the time I was engineer-in-chief myself.

(Testimony of Fred A. Gardner.)

Q. That was all the positions you occupied?

A. I occupied the position of guarantee engineer for the steamer "Chitose."

Q. Who was the engineer-in-chief when you were assistant?

A. Mr. Forsyth. When Mr. Forsyth was absent, during a great deal of the time, due to illness, being over at Carlsbad, and other places in the east, on account of his health, I assumed responsibility of his work during that time.

Q. When was Mr. Dickie there? Was he there during your time?

A. Mr. Dickie was there up to the time Mr. Forsyth became president of the works.

Q. What I want to get at is, was Mr. Dickie's term coincident [1971—1883] with your terms?

A. He was there all the time I was there up to Mr. Forsyth's becoming president, and then he severed his connection with the concern.

Q. How long was it after you started there that Forsyth came there?

A. I really could not tell you that without referring to the records of the Union Iron Works. They can all be procured there. Due to the fact that my duties as assistant engineer were so very similar to that of the chief engineer, I did not realize when the change took place, as far as that is concerned.

Q. So you have no idea of it at the present time?

A. No.

Q. So as to give us any approximate idea of it?

A. I can refer you to the Union Iron Works,

(Testimony of Fred A. Gardner.)

where you can get the exact information.

Q. I understand. I do not need those references because I can sift out the sources of my information afterwards.

A. There is nothing to impress it upon my memory, therefore I cannot answer absolutely. There were a number of changes took place, as far as the concern itself was concerned, it went from the old Union Iron Works to the United Shipbuilding Combine, and from that to Mr. Schwab, and various changes that I am not familiar with; it did not affect my position at all, therefore I was not impressed by them.

Q. Do you remember during the time that you were connected with them where figures were made upon the repairing of a vessel where the United Engineering Works suffered a very large loss?

Mr. McCLANAHAN.—You refer to some specific case, Mr. Frank?

Mr. FRANK.—The question explains itself. Let the witness answer it. [1972—1884]

A. I really do not know what you refer to. There may have been cases in which the United Engineering Works have suffered severe losses, and so far as I am concerned I do not know anything about that part of it. I do not know what you refer to. If I knew what you referred to I would try to answer the question.

Q. You say there are many cases in which they suffered severe losses. What I am trying to get at is, within your recollection were there or were there

(Testimony of Fred A. Gardner.)

not many cases in which the estimates were very far below the cost of the work when it was actually done? A. Whose estimates?

Q. I am not fixing any person's estimates at the present time. I am asking whether or not the estimates that were made for the work at the Union Iron Works on many occasions were very far below the actual cost of the work, within your knowledge?

A. Not out of my absolute knowledge; only a matter of hearsay. I have heard that they lost money on some work that was estimated on.

Q. Why is it only a matter of hearsay?

A. Because I had no access to the books.

Q. Do not know what the result of the work was?

A. That is it exactly. I simply took the statement of the secretary, or some clerk in the office.

Q. In your experience in the Union Iron Works you had in no case any means of ascertaining whether or not the cost of the work corresponded with or exceeded the estimates?

A. Only by hearsay. I kept no record of that personally. I assume that the work I estimated on was satisfactory, as I did not hear anything to the contrary.

Q. That is all you know?

A. You generally hear all the [1973—1885] troubles that are coming in.

Q. That is all you have to judge from, Mr. Gardner? A. That is all I have to judge from.

Q. I suppose you assume, then, that you were peculiarly fortunate, more than anybody else who es-

(Testimony of Fred A. Gardner.)

timates on such work?

Mr. McCLANAHAN.—I object to counsel calling for an assumption.

Mr. FRANK.—Q. Is that the result of your reply?

A. I never assumed anything of the kind, no.

Q. Now, in making the estimate in this case, do you remember the protection plates on the stern of the vessel?

A. I don't recall the details of it just now, but I think there are some sketches in evidence here that might refresh my memory, if I could look at them, I could probably tell you.

Q. Well, I will refer you to the 37th item, in Kinsman's Exhibit 2: "Supplied and secured plates around stern frame and line plates around stern tube boss." Do you remember that?

A. I think I would be able to remember it better if I would be able to refer to the sketches in the matter.

Q. Did you make the sketches?

A. I would not be positive whether I did or not. I made some of them. I probably did make sketches. Whether I made these particular sketches or not, I would not be positive.

Q. Where are the sketches that you refer to?

A. I said probably they would assist my memory. No, at the time that this particular item was prepared, I suppose we had not seen these plates.

Q. Well, did you see them?

A. But we did see them later. As near as I re-

(Testimony of Fred A. Gardner.)

member it was in September, or something of that kind, 1911. [1974—1886]

Q. What was the nature of those plates as you remember them?

A. As near as I can recall they were just ordinary protection plates.

Q. That would not describe them to anybody, certainly not to the Court, who does not know what an ordinary protection plate is?

A. It seems to me there were sketches of those some place or other. Here is a sketch that describes it very well.

Q. That is Libellant's Exhibit, Heynemann No. 3, the last sketch? A. Yes.

Q. Well, now, you may use that sketch to aid you; tell us so that we can get into the record now what the protection plates consist of.

A. These are protection plates, made U-shaped in sections, extending up and down on the after part of the stern frame, and on the forward part of the stern frame, covering the edges of the shell plating.

Q. Is that all? Isn't there something more than that, Mr. Gardner?

A. There was another plate, apparently, on the boss plate in here; I think that is zinc; I am not positive.

Q. Why do you say that—because you see the memorandum on the sketch?

A. No, because in looking at this I am reminded when we made our estimate on this, before seeing it, we only allowed for zinc plates, and not for pro-

(Testimony of Fred A. Gardner.)

tection plates. This recalls it to my mind.

Q. Now, the protection plates referred to are the plates that are dotted on the sketch?

A. On the stern frame.

Q. On the sketch on the last page of this Heynemann Exhibit No. 3, is that right?

A. Yes, that is approximately correct. I do not suppose the sketch is absolutely correct.

Q. Now, are those flat plates?

A. U-shaped in sections, as I said. [1975—1887]

Q. By U-shaped in section you mean—

A. (Intg.) Plating bent so that if you cut it in two it would represent the letter U.

Q. In other words, it is a long sheet that is bent into what you might call a trough in length?

A. That is right.

Q. And it is also bent in again to accommodate itself to the changes in the shape of the particular part of the vessel that it is to be applied to, is it not?

A. Slightly bent to take the fill of the stern frame. Probably it is so shown on this sketch, although I am not positive that this sketch is correct.

Q. Well, who made the sketch?

A. I think Mr. Heynemann made this particular sketch.

Q. Well, were you present? A. I was.

Q. It is with your concurrence, then, is it?

A. Yes.

Q. What means did you adopt to prepare those plates and shape them up in order to apply them to the stern of the vessel? A. What is that?

(Testimony of Fred A. Gardner.)

Q. What mechanical means did you adopt to prepare those plates and shape them up in order to apply them to the vessel?

A. The plates would be heated and fitted from templates taken from the works.

Q. You say heated and fitted—

A. (Intg.) Heated and fitted to this place from templates taken from the works.

Q. When you say “heated and fitted” how would they be fitted?

A. Well, they would be literally bent into this shape that you refer to, that is all, and be fitted to place and bolted up.

Q. How would they be bent?

A. By heating them and bending [1976—1888] them.

Q. How would you bend them when they are heated?

A. How would you bend any piece of iron?

Q. Now, don't parry with me, Mr. Gardner. You are sitting here as an expert to explain mechanical details. Answer the questions as an expert mechanic would answer them. You are supposed to be testifying for those who know nothing about it.

A. Well, I think that explains it as well as can be explained to a person who as you say is not a mechanic; this metal would be heated and fitted to the form to go into that place.

Q. How would you fit it, by what mechanical means would you get it?

Mr. McCLANAHAN.—Q. Mr. Frank wants to

(Testimony of Fred A. Gardner.)

know how you would bend it.

A. How you would bend it?

Q. Yes.

A. Why, bend it, it could be bolted in place and bent over the form itself, but it was probably bent over a form in the shop or on an anvil, or a horn, or several different ways of bending iron; it might have been bent around a piece of shafting; there are several ways it might have been bent. It might have been made fast to a piece of shafting, a clamp put around, and bent around with this clamp; there are dozens of ways it could be done.

Mr. FRANK.—Q. What did you have in mind as the manner in which it was put down when you figured upon it?

A. I looked upon it as a job that would be done by an anvilsmith, a flanger—a flanger rather than an anvilsmith; not an anvilsmith.

Q. That is the mode in which you figured upon it?

A. That is the mode in which we figured upon it.

[1977—1889]

Q. What did you allow for time to perform that work?

A. Well, I will tell you in regard to this, as I will tell you in regard to the entire estimate, that the details of this work were largely made up on the job and have never been kept as to how much time; we made an estimate on this job before we knew what it was; we then made another estimate on the entire job after we had seen it, and we compared the totals of these two estimates and we found that there was

(Testimony of Fred A. Gardner.)

only a difference of some twenty-odd dollars, I think it was \$23, if I remember correctly, in favor of the Matson Navigation Company also, I think; I am not positive about that; and we considered that the total estimate was so very close together that we made no changes in our original estimate. Therefore I cannot tell you the time that was allowed for this work.

Q. You have no details now in your possession at all for any of the figures that you made?

A. No, other than the list that has been submitted here, which is not a detail, because each one of those items probably embraces 10 or 15, and some of them 20 items of detail.

Mr. McCLANAHAN.—Q. By the “list” you mean Exhibit 4 of Heynemann?

A. I don’t remember the numbers. It is the list that Mr. Heynemann submitted here, I believe (after examination) Schedule 4, that is it.

Mr. FRANK.—Q. Mr. Gardner, I notice upon this sketch that we have been speaking about, that you have a detail of sizes, have you not?

A. I see no detail of these patches or these protection plates.

Q. What is this (pointing)?

A. That is, I am not positive, but I think it is, the 12-inch radius showing that turn in there. [1978—1890]

Q. And on the other side?

A. I think it is the same; I am not positive in regard to that.

(Testimony of Fred A. Gardner.)

Q. Of the protection plates?

A. Yes, but it does not give the length or width of the protection plates; they are quarter-inch plates, a quarter-inch thick.

Q. Is there no other detail there?

A. I do not see the length of this, nor the length of that (pointing). I am inclined to think that this was put in in more than one piece; I am almost positive of that; it does not show that on the sketch.

Q. What do you mean by more than one piece?

A. That is, more than one piece in length.

Q. That detail would only have to do with the cost of material, would it not?

A. Not at all. It costs a good deal more to make it out of one piece like this than out of several pieces.

Q. I mean the length.

A. No, the labor as well. You can make a piece a foot long a good deal cheaper than you can make a piece that was 7 or 8 feet long, as this appears to be.

Q. Do you know whether or not now you figured upon one piece or several pieces?

A. I tell you, I kept no details of that estimate due to the fact that we made the estimate first, and then corrected up the total.

Q. You said that several times?

A. I think that I gave that in my former testimony.

Q. You have no recollection either of anything connected with it now? A. Not positive; no.

(Testimony of Fred A. Gardner.)

Q. You could make no figures upon it now of any kind?

A. No, not at the present without seeing the job again, seeing the job, and standing there alongside of it, and making an estimate as I did in that case, I could very easily do it again. [1979—1891]

Q. What advantage would there be of seeing the job instead of seeing the sketch?

A. Because the job itself would be absolutely correct, whereas I do not think the sketch is correct.

Q. Well, now Mr. Gardner, we will assume that the plate referred to on the after part of this stern bearing was a single plate. Can you give us any figures, then, upon it? A. No.

Q. Why not?

A. Because I don't know what the dimensions are. It does not give the dimensions here.

Q. Well assume for the purposes of these figures then, Mr. Gardner, that it was, that particular one was, 10 feet in length. Any other dimensions that you wish?

A. No. I would not be in a frame of mind to figure that out. As far as that was concerned, if I was figuring that I would get in my office and sit down and take out my slide rule and take my time to do and figure it. I am not in a position to sit here and figure on anything, not in the frame of mind to be figuring on things, when we are trying to find out what the answers to your questions should be.

Q. Is that the frame of mind in which you are testifying, trying to find out what the answers to my

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questions should be?

A. Yes, should be, to answer them correctly. I could not answer them correctly from this sketch.

Q. Isn't that accomplished when you give me the figures? That is all that is required to answer my questions correctly, is it not?

A. You are going on the assumption that there is no estimate. As I understand it, you are asking me for figures on a specific case.

Q. I have asked you for figures, giving you certain dimensions; [1980—1892] now, whether or not they are applicable to the particular piece of work in question is not a matter with which you are concerned. That is for me.

A. Well, Mr. Frank, as you are assuming several things I suppose I am privileged to assume that I am up here answering questions applying to the steamship "Hilonian" and not on assumed dimensions.

Q. Well, you are mistaken about that.

A. I may be, but if I am, I would like to be instructed, of course.

Q. I will now take and assume these dimensions and ask you to give us your method of figuring upon it. Now, we will take a piece that is 10 feet long, and 6 inches overlapping on each side of the piece on the after end of this propeller arch. I ask you to give us your figure as to the cost of preparing that and putting it on to the propeller arch.

A. I do not feel that I could concentrate my mind on this just at the present time, in such a manner as to give you a reasonable idea of the cost of this. If

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you desire, I can take my time and make an estimate of this.

Q. How long a time would it take you?

A. Oh, I suppose sometime during the day.

Q. Well, I should like to be present when you make the estimate.

A. Well, I would not object to that at all, if you want to sit in the same room as far as that is concerned; if I went to make an estimate, I do not see, to begin with, I could not make an estimate because I do not know the form of this stern frame at the present time, it is not shown here, the amount of corrosion that has taken place, for which this plate is put on, so that it could be neatly fitted on; if there was a great deal of corrosion, there is no practical way of sitting [1981—1893] here and making an estimate of that that is of value. You put the ship on the drydock and let me stand there and make an estimate of it as I did before, and I will give you an estimate, and you can be there and everybody else, as far as that is concerned.

Q. When you made your estimate before the work had been thoroughly performed, had it not, and been finished? You did not see it before the work was finished?

A. I did not see it before the work was finished.

Q. It was some months after it was finished?

A. Some months after it was finished.

Q. And after the parts had been painted?

A. I suppose they were painted. There was not much evidence of it, when we were there; the paint

(Testimony of Fred A. Gardner.)

apparently was a poor quality, all gone, as far as I can recall it.

Q. You think it was all gone? A. Yes.

Q. Are you sure of that?

A. I am not positive, but my recollection of it is it was practically all gone, and still corrosion going on there.

Q. Still corrosion going on? A. Yes.

Q. But the corrosion that had been there before the piece was put on, you knew nothing about, did you?

A. No.

Q. And that is the corrosion that you must know now in order to make the figure, is it? A. No.

Q. Some new corrosion that happened afterwards?

A. Because we could tell the amount of corrosion that had already taken place by getting up on the top and looking down, as to what form that post was in, and what form it was in above the place where the putty was put on—you could form some estimate as to how much corrosion had taken place there. [1982—1894]

Q. Do you mean to say that you could look down inside of the putty between that and the stern frame?

A. For a certain distance, yes.

Q. Then it is not fitted very closely, is it?

A. Not usually; any ship is not a watertight job; it has been filled with putty and put on.

Q. Filled with putty? A. Yes, to some extent.

Q. You could look down under those conditions?

A. We could look down for some little distance at the top.

(Testimony of Fred A. Gardner.)

Q. Do you remember looking down to ascertain the amount of corrosion? A. Before what?

Q. Before you made these figures before?

A. To be perfectly exact I do not recall that we got up there and looked down there, but we looked in here (pointing to sketch). We could see them off here at the bottom and assumed they were off a similar amount at the top, which would be an ordinary assumption in making an estimate for doing that work under ordinary conditions.

Q. What part did the corrosion form in your estimate of the cost of repairing that piece of iron and painting it, as you have suggested, and putting it on there? A. It depends how much we found of it.

Q. Well, I don't care how much you found of it; that is not the point, as to the quantity. What part does it play in that estimate, much or little?

A. It forms considerable part of the estimate; in view of the fact that these plates are supposed to be put on so as to fit reasonably tight.

Q. Fit reasonably tight? A. Yes.

Q. Do you want us to understand, then, that it forms a part in determining how much the plate should be bent—is that it? [1983—1895]

A. To some extent, yes.

Q. Is that the only thing?

A. Well, in fitting the plate generally, you hammer it up in place after it has been roughly formed. If it has a perfectly true surface you could take the template off and put the piece on; not being a true surface you have got to accommodate this plate to

(Testimony of Fred A. Gardner.)

the irregularities of the surface, both fore and aft and athwartship.

Q. Did you make such an allowance in your figures?

A. In the way that it is generally made, yes.

Q. How did you make it?

A. I do not recall. I have not the details that were made at the time.

Q. Are you sure you made an allowance?

A. I am sure we made such an allowance.

Q. You have not any idea what the nature of it was?

A. No, not at the present time. That is several months ago, and there have been dozens of ships since then—or some years.

Q. You don't know whether much or little?

A. I don't remember whether much or little.

Q. Now, Mr. Gardner, we will take for instance item 92, where we will not find any corrosion; "removed lower head I. P. valve chest to shop, drilled same for one and a half inch drain plug. Holes drilled in rim of the cover." Just describe first what that head of the valve chest is. If you can, make a sketch of it, that might answer the purpose.

A. Practically all that I remember of it at the present time is that it was a cast-iron head, ribbed to strengthen it; the dimensions of it I could not give you; the thickness of material I could not give you.

Q. Make a sketch of the shape of it?

A. I do not think I could give you a correct sketch of the shape of it. [1984—1896]

(Testimony of Fred A. Gardner.)

Q. You don't remember anything about it at all?

A. I remember it from the fact we were standing there and looking at the things on it, and measuring it, and all of the rest of it, and made figures alongside of the job. I have had thousands of things of that kind since then, and I therefore don't remember the details of this particular one.

Q. You don't remember it? A. No.

Q. Would an examination of the sketch in Heynemann Exhibit No. 3 help you at all? A. Possibly.

Mr. McCLANAHAN.—Which sketch?

Mr. FRANK.—Of that particular item, Item 92 in Heynemann Exhibit 3; the sketch under the head of 92.

A. It merely reminds me, as I have already said before, it was a circular head of cast-iron, ribbed for strength; that shows that; that is all.

Q. That is all you can make out of that now?

A. That is practically all.

Q. What was done to that head, Mr. Gardner?

A. Well, when I gave my direct testimony I had recently been on that job again, and I think by referring to the direct testimony you have a clear statement as to what I recollected at that time as to having been done to the head.

Q. Well, haven't you any recollection now?

A. Not as detailed as I had at that time.

Q. Well, give us such a recollection as you have now.

A. No objection to referring to my previous testimony in the matter my direct testimony, is there?

(Testimony of Fred A. Gardner.)

Q. No, I have no objection to your referring to your previous testimony in the matter, if you can find it. [1985—1897]

A. I have found it. This is where it had been drilled for an inch and a half drain plug, and these are the holes through the ribs (pointing to the sketch).

Q. Does that assist you any now?

A. That states what was done here.

Q. What states what was done?

A. This states what was done to her, my testimony. "We saw the intermediate valve chest lower head, and where it had been drilled for an inch and a half drain plug; although we did not see the holes in the ribs of this cover a description was given of the holes, and the size, to the best of my recollection, and we figured on the item as an extra."

Q. That is on page 1847? A. Yes.

Q. That is all then that you remembered then about the transaction?

A. Possibly not. That was considered an answer to the question that had been put.

Q. You say previous to giving that testimony you had recently seen the valve head; is that right?

A. Yes.

Q. How long was it before that that you had seen the valve head?

A. I think it was in September, 1911; I am not sure; as I recall it it was in the year 1911.



